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Monterey, California

THESIS

AN ASSESSMENT OF PUBLIC LAW 95-507

by

Charles E. White

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An Assessment of Public Law 95-507

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The results of this study indicate: The law has the potential of both increasing opportunities for small and small disadvantaged businesses as well as assisting them to become viable independent enterprises. Implementation has been slow due to a combination of reasons. There are certain inherent weaknesses in the subcontracting provisions. The implementation/administration has increased procurement administrative lead time (PALT). The most difficult task in administrating the subcontracting provisions is determining the acceptability of plans. Contract-by-contract reporting will be burdensome. The costs of implementing/administering the law by the contractor will be generally absorbed by the government.

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I. INTRODUCTION

This year the Federal Government plans to spend over $100 billion in contracts, and all too often, small and small disadvantaged businesses do not get their fair share of the Federal procurement dollar. [1/1]

Public Law 95-507, signed into law on October 24, 1978, is an attempt to correct this situation and significantly increase the small and small disadvantaged business share of the "Federal pie." The essence of this commitment by Congress is denoted by the following language from the law: [Section 2]

> It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

A. OBJECTIVES OF THE RESEARCH

The objectives of this research effort are: (1) to briefly examine the intent and history of the law; (2) to present the provisions of the law; (3) to analyze the key area, subcontracting provisions, of the law; and, (4) to identify and discuss major implementation impediments.

B. RESEARCH QUESTIONS

In order to accomplish the objectives of this study, the following research question is presented: What has

been the impact of this legislation on the acquisition process in the Department of Defense (DOD)?

Supplementary questions are addressed as follows: (1) What is the basic intent of the law? (2) What does the law provide? (3) What are some of the impediments in its implementation? (4) How will compliance be evaluated?

C. SCOPE, LIMITATIONS AND ASSUMPTIONS

Although the law is applicable to all Federal agencies and departments, this study will focus on the Department of Defense. The Department of Defense is not only the largest spender of Federal procurement dollars, but it also has potentially the greatest opportunity to increase the share of dollars to both small and small disadvantaged businesses.

Although P. L. 95-507 contains many provisions concerning several aspects of small business, this study was particularly directed toward the subcontracting provisions of the law. These provisions entail more obligations for large prime contractors, and also have the greatest potential for increasing the opportunities for small and small disadvantaged businesses in the Federal procurement arena.

The law has been in effect since the fall of 1978, however, policies and procedures are still evolving. Therefore, any conclusions and recommendations are necessarily "point-in-time," and could become outdated as the policies

continue to evolve. It is assumed that the reader of this study is familiar with contracts and the acquisition process within the United States Government.

D. METHODOLOGY

1. Primary Research

a. The initial literature search revealed that there has been little or no research conducted on the subject. Several brief articles have been published, but there has been no extensive research.

b. The initial literature search was followed by a series of telephone calls to major policy participants in the Washington, D. C. area. Additionally, calls were made to several DOD procurement agencies.

2. Secondary Research

a. A one week fact-finding trip was made to the Washington, D. C. area. Activities contacted included the Defense Logistics Agency, Department of Defense, Department of the Army, Office of Federal Procurement Policy, the Small Business Administration, the Naval Material Command, the Naval Air Systems Command, the Naval Sea Systems Command, the Naval Electronics Systems Command and the Sterling Institute.

b. During the Washington trip, a one day trip was made to Philadelphia during which interviews were conducted

at the Navy Aviation Supply Office and the Defense Industrial Supply Center.

c. Several trips have been made to the San Francisco Bay and Sunnyvale, California, areas during which interviews were made with several civilian contractors, as well as the Defense Contract Administration Services Management Area, San Francisco (DCASMA S.F.) and the Small Business Administration District Office, San Francisco, California.

E. LITERATURE REVIEW

Since the passage of the legislation in 1978, there have been several policy letters issued by the Office of Federal Procurement Policy (OFPP). The Defense Acquisition Regulations Council (DAR) promulgated one study which is only peripheral to P. L. 95-507. There have been several articles on the subject which have appeared in various professional magazines, such as the Contract Management National Contract Management Association (NCMA), the Defense Management Journal and the Federal Contracts Report (FCR). Several examples of commercial policy letters were obtained from companies during interviews. Also, copies of position papers were obtained from several industry associations. Additionally, there were numerous memorandums and other policy related documents obtained during the Washington trip.

F. ORGANIZATION OF STUDY

Chapter II, the "Framework," provides the reader with a perspective on the general acquisition policies, procedures and key players. Chapter III provides perspective for the intent of the law. Chapter IV introduces the reader to the major provisions of the law, and Chapter V is "An Analysis of the Subcontracting Provisions." Chapter VI presents the study's conclusions and recommendations.

II. FRAMEWORK

P. L. 95-507 represents important and significant changes in the Federal Government procurement process. Congress went into unprecedented detail in outlining the requirements, obligations and responsibilities relating to subcontracting with small and small disadvantaged concerns. Any time a change of this magnitude occurs, it can be expected that the transition from intent to full implementation will be laden with difficulties. The law is approximately two years old, but as this study will show, it is a long way from being fully implemented and effective as intended. A copy of the law is provided in Appendix A.

In order for the reader to understand the mechanics as well as the impact of this law, an understanding of some of the key organizational players and their programs are presented.

A. THE SMALL BUSINESS ADMINISTRATION

> The essence of the American economic system of private enterprise is free competition..... It is the declared policy of the Congress that the Government should aid, counsel, assist and protect, insofar as possible, the interests of small-business concerns in order to preserve free competitive enterprise, to ensure that a fair proportion of the total purchases and contracts for property and services for the Government... ...be placed with small business enterprises. [2/232]

The Small Business Act established the Small Business Administration (SBA) in 1953. The SBA originally had a temporary existence of two years, but its franchise was extended periodically until 1958, when it became a permanent agency.

Prior to World War II, assistance to small business was limited to several antitrust legislation laws. At the beginning of World War II, the Government recognized the need to increase its reliance on small business. Mobilization studies showed that the industrial capacity of small business was not being used. Not only were some small businesses unable to contribute fully to the war effort, they often could not obtain manpower and raw material for essential production. Many small firms faced the prospect of going out of business because Government agencies created to administer war production favored large corporations that had proven management and technical capability and the capacity for mass production. This situation was corrected by the small business programs of the War Production Board and the Smaller War Plant Corporation. [3/125]

After the war, the government took steps to strengthen small business participation in the Federal marketplace. One of these steps was the Armed Services Procurement Act of 1947.

Other steps were the Federal Property and Administrative Services Act of 1949 and the Defense Production Act of 1950, in which Congress expressed a desire that small business receive a fair share of Government contracts. With the beginning of the Korean War, the needs of the nation again resulted in the creation of an agency to help ensure that small businesses were utilized in the defense effort. This creation was the Small Defense Plants Administration. It was also oriented toward the war effort and not to the small business community in general. Then in 1953, Congress created the Small Business Administration.

1. Organization of SBA

The Small Business Administration is an independent agency of the Executive Branch of the U. S. Government and is headed by an administrator who is directly responsible to the President of the United States. The SBA is organized along three lines - clientele, functions and geography. It serves as the voice for small business in the Executive Branch. Internal operations are organized around its principle line functions, namely, financial assistance, procurement, management assistance and investment assistance. [4/3]

SBA has 4,500 employees and a budget in excess of $112 million. SBA operates ten regional offices and 81 branch and district offices to aid the 8.8 million small businesses throughout the United States. [5/36]

2. The Role of Small Business in Government Procurement

Goverment procurement has been used to accomplish socio-economic purposes since 1865 when the purchase of only American bunting was mandated. However, utilization of Federal procurement as a vehicle for achieving social goals has its roots in the depression. During the 1930's when the United States was struggling to recover from the great depression, Congress began to show interest in, and passed into law, many socio-economic assistance programs. Since that time, both the Congressional and Executive branches have made a conscious decision to utilize Federal procurement as a means to advance social and economic improvement and reform.

3. Small Business Procurement Assistance Programs

The SBA administers some 17 programs. The principle functions of SBA are: (1) financial assistance, (2) management assistance, (3) assistance in providing equity capital, and (4) procurement assistance.

The procurement assistance programs are implemented through the procurement process by such techniques as:

Set-asides

Certificates of Competency

Management Assistance/Counseling

8(a) Program

Small Business Sub-contracting

a. Set-Asides for Small Business

The word "set-aside" means something reserved or put to one side or set apart for a purpose. It is a method used to insure that small business concerns receive a fair opportunity to participate in the program of providing supplies and services to the Government. Set-asides may be total or partial. Subject to any applicable preference for labor surplus area set-asides, any individual procurement or class of procurements or an appropriate part thereof may be set-aside for the exclusive participation of small business concerns when such action is determined by the Small Business Specialist and the Contracting Officer (upon the initiation of either) to be in the interest of: (1) "maintaining or localizing the nation's full productive capacity," (2) "war or national defense programs," or (3) "assuring that a fair proportion of governmental procurement is placed with small business concerns."

b. Certificate of Competency

SBA has statutory authority to certify the competency of any small business concern as to capacity and credit. "Capacity" means the overall ability of a prospective small business contractor to meet quality, quantity and time requirements of a proposed contract and includes ability to perform, organization, experience, technical knowledge, skills, "know-how," technical

equipment and facilities or the ability to obtain them. The word "credit" refers to the concern's financial resources, or its ability to obtain the resources required during the performance of a contract.

In procurements where the highest competence obtainable for the best scientific approach is needed, as in certain negotiated procurement of research and development, highly complex equipment or personal or professional services, the Certificate of Competency procedure is not applicable to the selection of the source offering the highest competence obtainable or best scientific approach. However, if a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach, and prior to award, the Contracting Officer determines that the concern is not responsible because of lack of capacity or credit, the Certificate of Competency procedure is applicable.

c. Management Assistance Counseling

The SBA has been attuned, from inception, to the need of professional business expertise in getting a small business off to a good start. The first management assistance involved training courses for 75 owners in 1954. Management assistance programs include training courses, pre-business workshops, conferences, clinics,

foreign trade counseling, personal business counseling and the distribution of publications and films on a wide range of subjects.

The SBA also has standing agreements for managerial assistance from professional organizations that include the National Association for Accountants, American Institute of Industrial Engineers, Society for the Advancement of Management Sales and Marketing, Executive's International and the Institute of Internal Auditors. [6/38]

In 1972, the SBA established the Small Business Institute (SBI). The SBI employs the services of 150 participating colleges and universities. Under the supervision of the university faculty and the SBA staff, senior and graduate students work directly with owners of troubled firms.

The SBI assistance is primarily directed toward small businesses which have received SBA loans or other assistance.

d. The 8(a) Program

The 8(a) Program began back in 1953 as a section of the Small Business Act (Public Law 85-536 as amended). Section 8(a) of the act was enacted as a stand-by emergency measure to assure that small businessmen received a fair share of government contracts during wartime. The Small Business Administration (SBA), however, never used this

authority for that purpose and Section 8(a) remained "dormant" for almost 15 years after its enactment.

The urban racial disturbances of the mid-1960's appeared to confirm that even the Civil Rights Act of 1964 was not sufficient to defuse the potential explosive social situation which in part was attributed to a perceived lack of economic control over their destinies by minority group residents of ghetto areas. This lack of economic control was perceived as a lack of equality of opportunity. The decade of the nineteen-sixties witnessed the largest wave of legislative, judicial and executive actions to secure and extend civil rights to America's non-white minority groups of any similar period in the history of this country.

During this period of racial unrest and social upheaval, characterized by riots in most of the major cities, the Section 8(a) Program was pressed into service as one policy attempt to alter the opportunity structure available to minority group members.

President Johnson launched the Test Cities Program on October 2, 1967. Section 8(a) was used under the Test Cities Program to give preference in award to those government contractors who were located in areas of "concentrated unemployment or underemployment" as determined by the Department of Labor.

The start of the so called "8(a) Minorities Contracting Program" can be traced back to a memorandum issued by President Nixon on December 5, 1969. In this memorandum, President Nixon appointed a task force to look for viable techniques for channeling federal contracts to minority firms. The task force identified Section 8(a) of the Small Business Act of 1953 as the only legal authority that would support the President's desire for channeling federal contracts to minority firms without benefit of competition.

4. Small Business Subcontracting Program

The Government depends on prime contractors to make and administer subcontracts. Approximately 50% of all Government procurement dollars result in subcontracts. [7/8] OFPP Policy Letter 80-2 defines a subcontract as "any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract."

DAR 14-001.5 defines subcontractor as "any supplier, distributor, vendor or firm which furnishes supplies or services to or for a prime contractor or another subcontractor."

Prior to P. L. 95-507, the Government's small business contracting program required Government prime

contractors to assume an affirmative obligation with respect to subcontracting with small business concerns. In contracts which ranged from $5,000 to $500,000 the contractor undertook the obligation of accomplishing the maximum amount of small business subcontracting consistent with the efficient performance of the contract.

The Utilization of Small Business Concerns Clause was included in all contracts in amounts which exceeded $5,000 except contracts which, including all subcontracts thereunder, were to be performed entirely outside the United States, its possessions and Puerto Rico, and to contracts for services which were personal in nature.

A "Small Business Subcontracting Program" Clause was included in all contracts (except maintenance, repair and construction contracts) which exceeded $500,000 and which, in the opinion of the Contracting Officer, offered substantial subcontracting opportunities. Prime contractors who were to be awarded contracts that did not exceed $500,000 but which in the opinion of the Contracting Officer, offered substantial subcontracting possibilities, were urged to accept the clause.

Public Law 95-507 established a new small business and small disadvantaged business subcontracting program. Also, the legislation established an office of Small and Disadvantaged Business Utilization in each Federal agency

with procurement authority. The major provisions of P. L. 95-507 will be discussed in later chapters.

B. THE DEPARTMENT OF DEFENSE AND THE DEFENSE ACQUISITION REGULATION

The Department of Defense (DOD) is the major Government procurement agency. Approximately $50 billion of the DOD budget was spent on purchasing materials and services in FY 79.

The organization for defense procurement is wide ranging and complex. Responsibilities for military procurement extend through every segment of the military establishment from the Secretary of Defense down to the local service installation supporting a tactical unit in the field. Over 1,000 activities and more than 50,000 people are engaged in purchasing operations and contract administration alone; and, there are additional personnel involved in procurement policy management review and support functions. [8/39]

The principal statute affecting defense procurement is the Armed Services Procurement Act of 1947. This act provided a common, uniform statutory basis for procurement by all military services. The present Defense Acquisition Regulation has grown from this basis.

While the Small Business Administration is the one agency that was created by Congress solely to advise and assist the nation's small businesses, various Government

departments and agencies provide services to small businesses. Defense Acquisition Regulation (DAR), Section 1, Part 7, "Small Business and Small Disadvantaged Business Concerns," implements the Armed Services Procurement Act.

DAR 1-702 General Policy states that:

> (a) It is the policy of the Department of Defense to place a fair proportion of its total purchases and contracts for supplies, research and development, and services (including contracts for maintenance, repairs and construction) with small business concerns. Every effort should be made to encourage participation by such concerns in the acquisition of supplies and services that are within their capabilities. Heads of contracting activities and heads of field contracting and contract administration activities are responsible for the effective implementation of the Small Business and Small Disadvantaged Business Utilization Program(s) within their respective activities and for the accomplishment of assigned program goals. Heads of contracting activities and heads of field contracting and contract administration activities will assure that contracting and technical personnel attached to their activities are informed of the benefits that accrue to the Nation and to the Department of Defense through the proper use of the capabilities of small business concerns in the acquisition of military requirements and that these individuals take all reasonable action to increase the level of participation by small business firms in the awards for products and services by their activities.
>
> (b) Small business concerns, both established and potential suppliers (1-701.3 and 1-701.4), shall be afforded an equitable opportunity to compete for all contracts that they can perform. Therefore, the Departments, to the extent consistentwith the best interests of the Government and in order to broaden the industrial base, shall:
>
> (i) attempt to locate additional qualified small business suppliers by all appropriate methods, including use of the assistance of SBA, particularly where only a limited number of small business concerns are on bidders' mailing lists;

(ii) give wide publicity to contracting methods and practices;

(iii) publicize proposed acquisitions by use of advance notices or other appropriate methods (see 1-1003);

(iv) include all established and qualified potential small business suppliers on the bidders' mailing lists (see 2-205);

(v) send solicitations to all firms on the appropriate list, except that where less than a complete list is to be used pursuant to 2-205.4, at least a pro rata number of small business concerns shall be solicited;

(vi) divide proposed acquisition of supplies and services, except construction, into quantities not less than economic production runs, so as to permit bidding on quantities less than the total requirements; allow the maximum time practicable for preparation and submission of bids, proposals, or quotations; where feasible, establish delivery schedules which will encourage small business participation;

(vii) examine each major acquisition to determine the extent to which small business subcontracting should be encouraged or required;

(viii) use small business concerns to the maximum extent feasible as planned producers in the Industrial Readiness Planning Program; and

(ix) maintain liaison with Federal, State (including Governor's Commissions), and local agencies and other organizations for the purpose of providing information and assistance to small business concerns.

(c) All proposed acquisitions of supplies or services with an anticipated dollar value of less than $10,000 subject to small purchase procedures shall be reserved for exclusive participation by small business concerns (see 3-603.1(g)).

(d) The extent of participation by small business concerns in defense acquisition shall be accurately measured, reported and publicized. All solicitations shall require each prospective supplier to represent whether it is a small business or small disadvantaged business concern for purposes of the specific acquisition (see 1-701 and 1-703). Records of the total value

of contracts and subcontracts placed with small business concerns during each fiscal year shall be maintained by the use of DD Form 350 (Individual Procurement Action Report, DD Form 1057 (Monthly Procurement Summary by Purchasing Office)(see 1-110 and Section XXI, Part 1); and DD Form 1140-1 (Defense Small Business Subcontracting Program Quarterly Report of Participating Large Company on Subcontract Commitments to Small Business Concerns) (see 1-707).

(e) The Military Departments shall assign small business technical advisors to assist each resident SBA Procurement Center Representative in the performance of his duties:

(1) Each advisor shall be a full-time employee of the contracting activity and shall be well qualified, technically trained and familiar with the supplies or services acquired at the activity.

(2) Each advisor's principal duty shall be to assist the SBA Procurement Center Representative in his duties and functions relating to Sections 8 and 15 of the Small Business Act. Providing such assistance shall take precedence over any other collateral duties that may be the responsibility of the small business technical advisor.

C. RECOMMENDATIONS OF THE COMMISSION ON GOVERNMENT PROCUREMENT

The Commission on Government Procurement (COGP) was created by Public Law 91-129 in November 1969 to study and recommend to Congress methods "to promote the economy, efficiency and effectiveness" of procurement by the Executive Branch of the Federal Government. [2/vii]

The Commission's study resulted in 149 recommendations for improving government procurement. The COGP examined the use of the acquisition process in implementing national policies and accomplishing socio-economic goals. The COGP identified some 39 socio-economic programs (see Table 1).

Their report concluded that "the problems engendered by use of the procurement process in the implementation of national goals are that procurement becomes more costly and time-consuming with the addition of each new social and economic program. The cumulative effect of programs already imposed on the procurement process and the addition of those contemplated could overburden it to the point of threatening breakdown." [2/111]

As a result of their examination, the COGP made three recommendations. These were:

> Recommendation A-43. Establish a comprehensive program for legislative and executive branch reexamination of the full range of social and economic programs applied to the procurement process and the administrative practices followed in their application.
>
> Recommendation A-44. Raise to $10,000 the minimum level at which social and economic programs are applied to the procurement process.
>
> Recommendation A-45. Consider means to make the costs of implementing social and economic goals through the procurement more visible.

Since publication of the COGP report, these recommendations have not been implemented. According to a General Accounting Office (GAO) report, "As yet, congressional support is not forthcoming. A major problem is that there is no committee in the Congress with jurisdiction over both procurement and the various socio-economic programs." [9/22]

TABLE 1

Socio-Economic Policies Affecting the Acquisition Process

PROGRAM	PURPOSE
Buy American Act*	To provide for domestic materials over foreign materials.
Preference for United States Manufacturers	To provide preference for domestic manufacturers in construction of diplomatic and consular establishments.
Preference for United States Manufacturers	To restrict U. S. Forest Service from purchasing twine manufactured from materials of foreign origin.
Preference for United States Products (Military Assistance Programs)*	To require the purchase of U. S. end products for the military assistance program.
Preference for United States Food, Clothing and Fibers (Berry Amendment)*	To restrict the Department of Defense from purchasing specified classes of commodities of foreign origin.
Officials Not to Benefit*	To prohibit members of Congress from benefiting from any government contract.
Clean Air Act of 1979	To prohibit contracting with a company convicted of criminal violation of air pollution standards.
Equal Employment Opportunity	To prohibit discrimination in government contracting.

Source: Bureau of National Affairs, Inc., Federal Contracts Report, Washington, D. C., February 19, 1979, pp. F-7 and F-8.

PROGRAM	PURPOSE
Copeland "Anti-Kickback" Act*	To prohibit kickbacks from employers on public works.
Walsh-Healy Act*	To prescribe minimum wage, hours, age and working conditions for supply contracts.
Davis-Bacon Act*	To prescribe minimum wages, benefits and work conditions on construction contracts in excess of $2,000.
Service Contract Act of 1965*	To prescribe wages, fringe benefits and work conditions for service contracts.
Contract Work Hours and Safety Standards Act*	To prescribe 8-hour day, 40-hour week and health and safety standards for laborers and mechanics on public works.
Fair Labor Standards Act of 1938	To establish minimum wage and maximum hours standards for employees engaged in commerce or the production of goods for commerce.
Prohibition of Construction of Naval Vessels in Foreign Shipyards	To prohibit use of appropriated funds for the construction of any Navy vessel in foreign shipyards.
Acquisition of Foreign Buses	To restrict use of appropriated funds to purchase, lease, rent, or otherwise acquire foreign-manufactured buses.
Release of Product Information to Consumers	To encourage dissemination of government documents containing product information of possible use to consumers.
Prohibition of Price Differential	To prohibit use of appropriated funds for payment of price differential or contracts made to relieve economic dislocation.

PROGRAM	PURPOSE
Required Source for Jewel Bearings*	To preserve a mobilization base for manufacturer of jewel bearings.
Employment Opening for Veterans*	To require contracts to list available employment openings with State employment system to assist veterans in obtaining jobs.
Covenant Against Contingent Fees*	To avoid contract obtained by broker for a contingent fee.
Gratuities*	To provide government with right to terminate if gratuity is given to the government employee to obtain contract or favorable treatment.
International Balance of Payments*	To limit purchase of foreign end products and services for use abroad.
Prison-made Supplies	To require mandatory purchase of specific supplies from Federal Prison Industries, Inc.
Preference to U. S. Vessels*	To require the shipment of all military and at least half of other goods in U. S. vessels.
Care of Laboratory Animals*	To require humane treatment in use of experimental or laboratory animals.
Required Source for Aluminum Ingot*	To eliminate excess quantity of aluminum in the national stockpile.
Small Business Act*	To place fair portion of government purchases and contracts with small business concerns.

PROGRAM	PURPOSE
Blind-made Products	To make mandatory purchase of products made by blind and other handicapped persons.
Duty-free Entry of Canadian Supplies*	To further economic cooperation with Canada and continental defense.
Use of Excess and Near-Excess Currency*	To provide preference in award to bidders willing to be paid in excess or near-excess foreign currency.
Purchases in Communist Areas*	To prohibit acquisition of supplies from sources within Communist areas.
Nonuse of Foreign Flag Vessels Engaged in Cuban and North Vietnam Trade*	To prohibit contractor from shipping any supplies on foreign flag vessel that has called on Cuban or North Vietnamese port after specific dates.
Labor Surplus Area Concerns*	To provide preference to concerns performing in areas of concentrated unemployment or underemployment.
Economic Stabilization Act of 1970	To stabilize prices, rents, wages, salaries, dividends and interest.
Humane Slaughter Act*	To purchase meat only from suppliers who conform to humane slaughter standards.
Miller Act*	To require contractor to provide payment and performance bonds on government construction contracts.
Convict Labor Act*	To prohibit employment on government contracts of persons imprisoned at hard labor.

PROGRAM	PURPOSE
Vietnam Veterans Readjustment Act	To give employment preference to disable veterans and veterans of the Vietnam area.

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* Indicates that the program has resulted in the issuance of a standard contract clause.

D. THE OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP)

The very first recommendation made by the COGP was to establish by law a central Office of Federal Procurement Policy in the Executive Office of the President, preferably in the Office of Management and Budget, with specialized competence to take the leadership in procurement policy and related matters. [2/9] In arriving at this recommendation, the COGP stated that:

> There is a void in policy leadership and responsibility, and a fragmented and outmoded statutory base. These shortcomings in basic law and policy are root causes of many problems that beset the procurement process.

OFPP was created under Public Law 93-400 enacted in 1974. Section 6 of the act outlined the authority and functions of the Administrator as follows:

AUTHORITY

> (a) The Administrator shall provide overall direction of procurement policy. To the extent he considers appropriate and with due regard to the program activities of the executive agencies, he shall prescribe policies, regulations, procedures and forms, which shall be in accordance with applicable laws and shall be followed by executive agencies (1) in the procurement of -
>
> (A) property other than real property in being;
>
> (B) services, including research and development; and
>
> (C) construction, alteration, repair or maintenance of real property;
>
> and (2) in providing for procurement by recipients of Federal grants or assistance of items specified in clauses (A), (B) and (C) of this subsection, to the extent required for performance of Federal grant or assistance programs.
>
> (b) Nothing in subsection (a)(2) shall be construed -
>
> (1) to permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance; or

(2) to authorize any action by recipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to States and political subdivisions.

(c) The authority of the Administrator under this Act shall apply only to procurement payable from appropriated funds: Provided, that the Administrator undertake a study of procurement payable from nonappropriated funds. The results of the study, together with recommendations for administrative or statutory changes, shall be reported to the President of the Senate and the Speaker of the House of Representatives at the earliest practicable date, but in no event later than two years after the date of enactment of this Act.

FUNCTIONS

(1) establishing a system of coordinated, and to the extent feasible, uniform procurement regulations for the executive agencies;

(2) establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures and forms;

(3) monitoring and revising policies, regulations, procedures and forms relating to reliance by the Federal Government on the private sector to provide needed property and services;

(4) promoting and conducting research in procurement policies, regulations, procedures and forms;

(5) establishing a system for collecting, developing and disseminating procurement data which takes into account the needs of the Congress, the executive branch and the private sector;

(6) recommending and promoting programs of the Civil Service Commission and executive agencies for recruitment, training, career development and performance evaluation of procurement personnel.

P. L. 93-400 also contained a "sunset" provision requiring reauthorization after five years. The five-year period was reached September 30, 1979.

Congressional hearings revealed distinct differences in the views between the two houses concerning OFPP's past performance. [10/A-22] The Senate bill was reported favorably without amendment and provided for a five year extension through fiscal years 1980-1984. The Senate Report also spoke very highly of the accomplishments of OFPP over the past five years.

The House bill, introduced by Rep. Jack Brooks (D-Tex), HR 3763, was also favorable, with amendment, only a three year extension, and limits OFPP's authority. The report frequently speaks of OFPP disparingly, of its lack of "focus," and of the need to assign it specific goals so that it will not again go astray.

Congressman Brooks cited his panel's view that while the OFPP can serve a worthwhile purpose in promoting efficiency and economy in Federal procurement, "the vagueness of OFPP's mandate has impaired the Office's effectiveness in accomplishing the major procurement reforms envisioned by the Commission on Government Procurement."

A major thrust of the committee's position was that the Office was injecting itself into the operational management of the Government's acquisition process. The bill limits OFPP's authority to issue policy directives to agencies, and "redirects its resources and attention toward three major goals."

(1) Development of a simplified and uniform set of procurement policies, regulations, procedures and forms, to be transmitted to Congress within one year of enactment of the reauthorization bill.

(2) Analyzing the procurement statutes and recommending changes designed to implement the uniform procurement system.

(3) Design and construction of a central management system to implement and enforce the uniform procurement system.

Other mandates in the bill included various activities that OFPP has been involved in, including taking a lead role in formulating and presenting executive branch positions on procurement legislation, reviewing and updating the Procurement Commission recommendations, and developing procurement personnel improvement programs.

While the bill's provisions overall were generally viewed as a reduction in the scope of OFPP's activities, one proviso is expected to strengthen its position with the agencies. This would require the Director of the Office of Management and Budget to certify that executive agency procurement rules and regulations are consistent with the broad policies laid out in the original OFPP statute, or to deny such certification. [11/A-1]

Final agreement was reached by both houses shortly before the "sunset" date. OFPP's existence was extended for four years. The Senate, acting on the recommendation of Senator Lawton Chiles (D-Fla), accepted most of the provisions of the House-passed bill (HR 3763, renumbered S 756)

authored by Rep. Brooks that sought to draw tighter guidelines for OFPP's future operations. But several significant changes were made by the Senate, which received Brooks' blessing and final approval by the House.

The measure as passed authorized the head of OFPP to issue policy directives, in accordance with existing law, for the purpose of promoting the development and implementation of the uniform procurement system or for the purpose of promoting the policies set forth in paragraphs (1) through (8) of Section 2 of the Act.

The listed policies, as amended by the Senate, include "otherwise promoting economy, efficiency and effectiveness in Government procurement organizations and operations."

Another policy addition is "coordinating procurement policies and programs of the several departments and agencies." The Senate amendments also authorize the Director of the OMB to "deny or rescind" any agency ruling if inconsistent with the listed policies.

Senator Chiles noted that the Senate amendments were aimed at stating more explicitly what the authority of OFPP will be during the next four years. In seeking to clarify the OFPP authority to issue policy directives, the Senate amendments make it clear that the office's policy directives "shall be followed by executive agencies, and clarifies the nature of such policy directives," Chiles stated. [12/A-20]

E. INDUSTRY

The Government relies heavily on civilian contractors to provide goods and services needed to support its missions. Historically, Government policy has favored contracting for goods and services rather than providing them in-house.

Bureau of the Budget (BOB) - (renamed the Office of Management and Budget) Bulletin 55-4 (January 1955) was the first executive document to state the Government policy of reliance on the private sector. With minor changes, this statement was repeated in Bulletin 57-7 (April 1957) and Bulletin 60-2 (September 1959). BOB Circular A-76 (March 1966, revised August 1967) replaced Bulletin 60-2 and is currently in force; it states that the Government should rely on the private sector for needed goods and services except when: [3/57]

- Use of a commercial source would delay or disrupt an agency program
- Direct performance is required for combat support, military training or mobilization readiness
- The product or service is not available from a commercial source
- The product or service is available from another Government agency
- Procurement from a commercial source will result in higher cost to the government

III. AN EXAMINATION OF THE INTENT OF THE LAW

The shear magnitude of the Federal Government's outlays for procurements create potentially extensive opportunities for implementing national socio-economic policies. In an address to the Small Business Administration's Annual Small Business Procurement Conference in Washington, D. C., Karen H. Williams, OFPP Administrator, characterized this policy with the following statements: [10/A-1]

> The socio-economic programs are often regarded as enforced encumberances which need to be endured, "history has taught us, we have had and will have continued demands to use federal contracts to serve in social and economic pursuits."
>
> The reason is simple, "This country's leadership has not, cannot and will not turn its back on a $100 billion tool to work on the nation's critical problems."
>
> While it may be difficult for some to recognize, socio-economic programs "now rank as important in the procurement process as the basic business of buying, and for good reason."
>
> "When we tend to small business preferences, we build a more vital economic fabric for the country which, in the long run, benefits the Federal Government as a buyer."
>
> "When we tend to the special needs of minority business, we build a stronger economy and, more importantly, a stronger social fabric for the country. When we tend to the preference for firms located in labor surplus areas, we build hope and health into the country's urban communities -- even through just one contact."

A. SOCIO-ECONOMIC POLICIES IMPLEMENTED THROUGH THE PROCUREMENT PROCESS

The use of the federal acquisition process in the implementation of socio-economic policies has a long history. Two of the first such attempts were the Naval Service Appropriation Act of 1865 and Army Appropriate Action of 1876. [14/78]

These policies mandated the purchase of only American bunting and preferred American labor and materials for public improvement contracts. Another one of the earlier attempts to bring about social change through the procurement process was the enactment of the Eight Hour Laws, a series of statutes setting standards for hours of work. The eight-hour day was first extended to workers employed by contractors and sub-contractors engaged in Federal projects in 1892. In 1905, an executive order by President Theodore Roosevelt prohibited the use of convict labor on Government contracts, thereby implementing through the procurement process an 1887 statute prohibiting the hiring-out of convict labor. [3/112]

During the depression of the 1930's, in the face of high unemployment and depressed wages, Congress enacted the Buy American Act, and most of the labor standards legislation relating to public contracts, including the Davis-Bacon Act, the Walsh-Healey Public Contracts Act, and the

Copeland "Anti-Kickback" Act. While the Buy American Act sought to protect American industry and promote jobs, the labor standards legislation was aimed principally at protecting workers from exploitation by unscrupulous employers. This period also produced the Federal Prison Industries Act and the Wagner-O'Day Act which established preferences for products produced by Federal prisoners and by the blind. [3/113]

Executive orders requiring nondiscrimination in employment by Government contractors are among measures which originated during World War II, when maximum use of the nation's manpower and resources was of chief concern. This concern also gave birth to the program in 1952 for placing Government contracts in labor surplus areas. Similarly, although Section 8(a) of the Small Business Act is aimed at small business generally, it has become the instrument of a special Government program to create and upgrade minority-owned business firms. [3/113]

Today, the procurement process increasingly is being recognized as a means of implementing and furthering Government policies. Table 1 lists some 39 socio-economic programs which affect the acquisition process. In view of these previous efforts to implement socio-economic polices, P. L. 95-507 simply follows an evolutionary process.

B. PROCUREMENT FROM SMALL BUSINESS

For more than thirty years, the Federal Government has recognized that small business must play an important role in supplying Government needs.

The goals of small business in Government procurement are:

Improve and broaden the competitive base

Provide innovative technology

Lower procurement costs

Perform a vital role in industrial mobilization

Disperse procurement funds industrially and geographically

Small business procurement policy is set forth in broad terms in the Small Business Act and other procurement statutes, but implementation of the general intent of Congress is left to SBA and the procuring agencies. Although SBA and the procuring agencies advocate small business participation in the Federal marketplace, they do not always agree on how much is possible or how to measure performance. Procurement officials, who are required to seek maximum performance at the lowest reasonable price, also are required to give special treatment to small firms. These goals are not always compatible. [3/126]

C. THE NEED FOR THE LEGISLATION

Small businesses, and in particular, small businesses owned by the disadvantaged, have not been considered fairly

as subcontractors and suppliers to prime contractors performing work for the Government. Military procurements comprise the largest single portion of the Federal purchase budget, yet the percentage of contract dollars awarded to small business has remained at about 20 percent since the program started (See Table 2). Military procurement to minority firms has remained below one percent (See Table 3). This precarious situation of racial minorities is even more vividly illustrated by the statistics presented in Table 4. According to these statistics, racial minorities account for over 18 percent of the United States population, but own only three percent of the businesses. This meager three percent accounts for a mere .71 percent of the total receipts of all businesses in this country. [15/7]

In 1958, Congress enacted the Small Business Investment Act which authorizes SBA to license a class of investment companies who would receive financing through the Government, and who, in turn, would provide a source of both term funds and private equity for small business concerns. In 1972, Congress amended this program by allowing the licensing of small business investment companies, who would have as their sole policy, investments in small business owned by individuals who are hampered because of social or economic disadvantage.

The House Committee on Small Business found that Section 301(d), Small Business Investment Companies, referred

TABLE 2

DOD SMALL BUSINESS PERFORMANCE

FISCAL YEAR	TOTAL CONTRACT AWARDS	AWARDS TO SMALL BUSINESS	
		AMOUNT (MILLIONS)	% OF TOTAL
1979	$58,174	$12,170	20.8
1978	54,359	10,735	19.7
1977	47,113	9,535	20.2
1976 + 197T	49,240	10,375	21.1
1976	38,998	8,108	20.8
1975	38,213	7,895	20.7
1974	34,518	7,074	20.5
1973	32,479	6,672	20.5
1972	34,047	6,128	18.0
1971	31,063	5,292	17.0
1970	31,777	5,492	17.3
1969	37,986	6,765	17.8
1968	40,304	7,584	18.8
1967	40,609	8,361	20.6
1966	34,878	7,612	21.8
1965	26,113	5,305	20.3
1964	26,920	4,842	18.0
1963	27,793	4,597	16.5
1962	26,147	4,622	17.7
1961	22,992	3,657	15.9
1960	21,302	3,440	16.1
1959	22,744	3,783	16.6
1958	21,827	3,729	17.1
1957	19,133	3,783	19.8
1956	17,750	3,475	19.6
1955	14,930	3,214	21.5
1954	11,448	2,902	25.3
1953	27,822	4,608	16.6

Source: Office of the Secretary of Defense

TABLE 3

DEPARTMENT OF DEFENSE AWARDS TO ALL BUSINESS FIRMS (INCLUDING CIVIL FUNCTIONS)[1]

FISCAL YEARS 1972 THROUGH 1979

(IN MILLIONS)	FY 1972	FY 1973	FY 1974	FY 1975	FY 1976	FY 1977	FY 1978	FY 1979
TOTAL AWARDS TO ALL FIRMS	$34.046	32.478	34.518	38.213	38.998	47.114	54.359	$58.544
TOTAL AWARDS TO SMALL FIRMS	$ 6.128	6.672	7.074	7.895	8.108	9.535	10.735	12.170
PERCENT TO SMALL FIRMS	18.0%	20.5%	20.5%	20.7%	20.8%	20.2%	19.7%	20.8%
TOTAL AWARDS TO MINORITY FIRMS[1]	*	*	19	26	27	61	216	377
PERCENT TO MINORITY FIRMS	*	*	0.1%	0.1%	0.1%	0.1%	0.4%	0.6%
TOTAL SMALL BUSINESS SET-ASIDE AWARDS	$ 1.752	1.890	1.817	2.251	2.291	2.890	$ 3.434	4.105
PERCENT OF SET-ASIDES TO TOTAL AWARDS TO ALL FIRMS	5.1%	5.8%	5.3%	5.9%	5.9%	6.1%	6.3%	7.0%

*IDENTIFICATION OF MINORITY FIRMS NOT STARTED.
[1]EXPRESSED IN MILLIONS.

Source: Office of the Secretary of Defense

TABLE 4

U. S. POPULATION
(PROJECTED - BASED ON 1970 CENSUS DATA)

	March 1972		March 1977	
	(Numbers)	%	(Numbers)	%
Total	204,840,000	100	215,566,000	100
Total Minority	34,578,000	16.9	49,500,000	18.6
Black	22,920,000	11.2	24,474,000	11.5
Spanish Speaking	9,178,000	4.5	11,269,000	5.3
Asian Americans, American Indians, and Others	2,480,000	1.2	3,757,000	1.8

*Source: U. S. Department of Commerce, Office of Minority Business Enterprise

COMPARISON U. S. BUSINESS OWNERSHIP, 1972*

	No. of Firms	% of Firms	Gross Receipts	% of Gross Receipts
Total all U.S. Businesses	12,997,000	100	$2,338 trillion	100
Total Minority Owned Businesses	381,935	2.94	16.6 billion	.71
Black	194,986	1.5	7.168 billion	.3
Spanish Speaking	120,108	.9	5.306 billion	.2
Asian Americans, American Indians and Others	66,841	.5	4.082 billion	.2

*Source: Department of Commerce, Office of Minority Business Enterprise

to as Minority Enterprise Small Business Investment Companies (MESBIC) are severly undercapitalized and as such were not fulfilling the intended statutory purpose of providing a source of equity capital for disadvantaged business.

Section 8(a) of the Small Business Act authorizes the SBA to enter into contracts with Federal procuring agencies or departments for the purchase of articles, equipment, supplies or materials for the Government. Since 1968, this authority has been used to channel Federal purchase requirements to the economically or "socially disadvantaged" persons. Congress had never extended legislative control over the 8(a) program, other than indirectly through appropriations, prior to P. L. 95-507.

Reports prepared by the General Accounting Office and investigations conducted by both the executive and legislative branches have disclosed that the 8(a) program has fallen far short of its goal to develop strong and growing disadvantaged small business. Only 33 of the more than 3,700 firms have both completed the 8(a) program and are known to have a positive net worth. [16/14]

One of the underlying reasons for the failure of this effort is that the program had no legislative basis. The 8(a) program simply evolved as a result of executive orders issued by Presidents Johnson and Nixon in response to the

1967 Report of the Commission of Civil Disorders, commonly called the Kerner Commission. The finding that triggered the 8(a) effort was that disadvantaged individuals did not play an integral role in America's free enterprise system. The report, therefore, recommended that steps be taken to increase the level of business ownership by minorities so that they would have a better opportunity to materially share in the competitive free enterprise. P. L. 95-507 gives a statutory basis to the 8(a) program. It establishes the policy goal of developing businesses owned by socially and economically disadvantaged persons. It also recognizes the pattern of social and economic discrimination that continues to deprive racial and ethnic minorities and others of the opportunity to participate fully in the free enterprise system.

Annual goals have been used to set targets for small business participation in Federal contracts. Federal departments and agencies set their own goals without appreciable input from SBA. Prior to P. L. 95-507, SBA might have disagreed with goals set by Federal buying activities, but there was no method beyond persuasion that SBA could utilize to influence the size of small business procurement goals.

Measures to improve SBA's role in helping to set these goals were needed. Congress believed that a more active

role for SBA in the goal setting process would result in more ambitious goals and a larger Federal contracting share for small business.

Congressional activity on P. L. 95-507 began on March 29, 1980, when the House of Representatives passed, by voice vote, H. R. 11318, introduced by Congressman Joseph P. Addabbo of New York, amending the Small Business Act (P. L. 85-536) and the Small Business Investment Act of 1958. The Senate held hearings on S.2259, a bill introduced by Senator Gaylord Nelson of Wisconsin and Senator William Hathaway of Maine; and subsequently submitted provisions of S.2250 for the House version of H. R. 11318 when the latter bill was ordered reported. The Senate bill was passed September 15, 1978. A Senate-House conference resolved differences in approach and emphasis between the bodies and the bill was sent to the President for signature. On October 24, 1978, President Carter signed the legislation which became Public Law 95-507.

D. SUMMARY

Chapter III has attempted to provide the reader with an appreciation for the intent of P. L. 95-507. The law is one of some forty programs which use the acquisition process to implement socio-economic policies. This chapter briefly traced the history whereby the Federal contract was used for this purpose. This chapter also highlighted

the role of small business in this process. Lastly, this chapter explored the need for the law and some of the events which preceeded its enactment.

Chapter IV will identify and briefly discuss the major provisions of the law.

IV. PROVISIONS OF PUBLIC LAW 95-507

Public Law 95-507 amends the Small Business Act and the Small Business Investment Act of 1958. On April 10, 1979, the Office of Federal Procurement Policy (OFPP) issued a notice of changes to be made in the Defense Acquisition Regulation (DAR). On July 27, 1979, the Defense Acquisition Regulatory Council (DAR Council) issued Defense Acquisition Circular Number 76-19 (DAC 79-19). This DAC contains revisions to the DAR that reflect the new law and its implementation by OFPP.

P. L. 95-507 constitutes an extensive revision to the small business program as previously found in DAR. OFPP issued an additional implementing directive (Policy Letter 80-2 dated May 9, 1980). A corresponding DAC (76-24) was issued by the DAR council, dated August 28, 1980. Again, the reader should be reminded that the implementation of P. L. 95-507 is still in a state of evolution. This chapter will delineate several of these provisions.

A. 8(a) PROGRAM

The 8(a) authority has been used since 1968 to channel Federal purchase requirements to minority firms. Prior to P. L. 95-507, Congress had never extended legislative control over the 8(a) program, other than indirectly through

appropriations. While the goal of the program has been to develop strong and viable minority businesses, the results to date have been poor, as was pointed out earlier in Chapter II.

P. L. 95-507 (Section 202) for the first time gives clear-cut statutory legitimacy to the 8(a) program. This new legislation seeks to strengthen SBA's educational and developmental resources with the expectation that the success rate of the program will improve. The intent of Congress concerning the 8(a) program is demonstrated in the following statement from the Conference Report:

> The Conferees intend that the primary beneficiaries of this program will be minorities but that the authorities given SBA pursuant to this subsection and section 7(j)(10) will be used solely for economic and business development and not merely to channel contracts at a random pace to a preconceived group of eligibles for the sake of social or political goals. [17/22-23]

One of the major problems that has plagued the 8(a) program in the past was the problem of "fronts." This problem occurs when a firm is supposed to be owned, operated and controlled by a minority; but is in fact, controlled and operated by members from the majority group. The minority is only used as a "puppet" to gain admission to the program. Disclosure of these types of abuses have only served to weaken the credibility of the program. Congress has attempted to correct these past abuses, by tightening the entrance criteria for the program. The law

specifically states that the purpose of section 8(a) is to "foster business ownership by individuals who are both socially and economically disadvantaged (Section 201)." The legislation further defines the term "socially and disadvantaged small business concern" as any small business concern - which is at least 51 percentum owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of such individuals. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically disadvantaged individuals are those whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socailly disadvantaged. In determining the degree of diminished credit and capital opportunities, the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individuals.

The law further states, that no small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical and management support, the

small business concern will be able to perform contracts which may be awarded to such concerns and has reasonable prospects for success in competing in the private sector. All determinations as outlined above, shall be made by the Associate Administrator (SBA) for Minority Small Business and Capital Ownership Development.

Once admitted to the 8(a) program, however, a participant may not be evicted without the observance of procedural rights. The 8(a) firm is entitled to a full hearing held under the safeguards of the Administrative Procedure Act.

Under the law, SBA will now have greater leverage in securing Government contracts for 8(a) firms. In the past, contracting officers could refuse to comply with SBA's request to set aside a specific contract for the 8(a) program. Under the amendments, provided by the law, when SBA and a procuring contracting officer disagree about the suitability of including a contract in the 8(a) program, the dispute will be resolved by the Secretary or other head of the agency or department involved (Title II, Sec. 202(a)).

The law also contains provisions for an ambitious two-year pilot program (Title II, Sec. 202(a)). Under this provision, the President was to name an executive-branch agency with which SBA would have special powers to negotiate an 8(a) contract. Such authority was premised on the

belief that with better quality and an increased quantity of contracts, the end result should increase the growth and development of the 8(a) firms. If SBA and the agency's contracting officer disagree on whether a procurement should be set aside for the 8(a) program, the head of the agency must propose contract terms and conditions to SBA within five working days. SBA then has the option of entering into a contract under the prescribed terms or else withdraw its request that the procurement be set aside under the 8(a) program.

The deadline for this two-year pilot program was established as September 30, 1980.

The President selected the Army as the agency to participate in the pilot program. The primary reason for the selection of the Army was the fact that it had led all other agencies in its support of the 8(a) program in previous fiscal years. Table 5 shows a comparison of awards by DOD agencies.

On May 16, 1979, the Department of the Army and SBA signed an interagency agreement which set forth the responsibilities of the two agencies with regard to the pilot program. However, to date, the results of the program have been less than sterling. There have been only three contracts in the amount of $11 million which have been negotiated under the program. [18/48] These contracts were for a

TABLE 5

SECTION 8(a) AWARDS
FY 77, FY 78 AND FY 79 COMPARISON
(MILLIONS)

AGENCY	FY 77	FY 78	FY79
DOD	$310.9	$404.8	$550.4
USA	129.6	142.2	203.9
USN	58.0	68.6	91.8
USAF	55.5	79.2	94.0
DLA	67.6	114.0	159.4
DMA	0.2	0.5	0.7
OTHER DOD	—	0.3	0.6

Source: Office of the Secretary of the Defense

reverse water osmosis project and installation of storm windows. Recently, the pilot program has received a great deal of press coverage concerning SBA's attempts to bring an Army scientific experimental project into the program. The controversy which has emanated from this selection has raised serious questions concerning the appropriateness of certain types of procurement for the program; the criteria for selection of qualified 8(a) firms; the additional cost to the agency in getting the contract completed; the qualification of SBA personnel to conduct the program; and the guarantee that the 8(a) firm will perform at least 55 percent of the job itself, in-house.

This current controversy only serves to demonstrate many of the inherent problems associated with a well intentioned program. Hopefully, the controversy will result in some "lessons learned" and improve future undertakings in this area. Congress has voted to extend the life of the 8(a) pilot program one year. [19/1]

Lastly, Section 204 of the law establishes in SBA a small business and capital ownership development program to provide assistance exclusively for 8(a) firms. The program will assist 8(a) firms in developing comprehensive business plans, assist firms in obtaining equity and debt financing, provide nonfinancial services such as counseling, management training, legal and other related services.

B. SUBCONTRACTING PROGRAM

Probably the most important section of the new law is Section 211 which amends Section 8(d) of the Small Business Act. It requires that the following clause be included in all contracts let by any Federal agency in excess of $10,000.

> It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency. The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the contractor's compliance with this clause.

Exceptions to the inclusion of this clause in a contract are as follows:

- does not exceed $10,000
- including all subcontracts under contracts, will be performed entirely outside of any state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico
- is for services which are personal in nature

1. Contracts Over $1,000,000 for Construction and $500,000 for All Others

Section 211 requires that the apparent successful offeror or apparent low bidder on Federal contracts for more than $1,000,000 for construction and $500,000 for all

others, submit, before award of contract, a subcontracting plan setting forth the following:

a. Percentage goals for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

b. The name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of the offeror or bidder and a description of the duties of such individual;

c. A description of the efforts the offeror or bidder will take to assure that small business concerns and small business concerns owned and controlled by the socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

d. Assurances that the offeror or bidder will include the required clause in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1,000,000 in the case of a contract for the construction of any public facility, or in excess of $500,000 in the case of all other contracts.

e. Assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies

or surveys as may be required by the Federal agency or the Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan; and

f. A recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns.

The above requirements do not apply to offerors or bidders who are small businesses. The law further states that the failure of any contractor or subcontractor to comply in good faith with the clause or any plan submitted shall be a material breach of such contract or subcontract.

In the negotiated method of procurement, only the apparent successful offeror is required to negotiate with the contracting officer a subcontracting plan which incorporates the information outlined above. The subcontracting plan shall be included in and made a material part of the contract. If within the time limit prescribed by the contracting officer concerned, the apparent successful offeror fails to negotiate the required subcontracting plan, the

offeror shall become ineligible to be awarded the contract. Further, prior compliance of the offeror with other such subcontracting plans shall be considered by the contracting officer in determining the responsibility of that offeror for award of the contract.

In the formal advertising method of procurement, the successful bidder is required only to submit a subcontracting plan which incorporated the required information. Again, as in the negotiated method, the bidder has to submit the subcontracting plan within the time limit prescribed by the contracting officer. Prior compliance of the bidder with other such subcontracting plans shall be considered by the contracting officer in determining the responsibility of such bidder for the award of the contract. The plan shall be included in and made a material part of the contract.

2. Incentives

In an effort to encourage contractors under the negotiated procurement method to further seek subcontracting opportunities for small and small disadvantaged concerns, Congress included the provisions for incentives to be used as appropriate. The OFPP implementation guidance sets forth the following incentive clause for use by procuring agencies:

> Incentive Subcontracting Program for Small Business and Small Disadvantaged Business (negotiated)
>
> (1) The contractor has established, in its subcontracting plan, the following goals for awards to small business and small disadvantaged business concerns;

(i)_____percent of the total planned subcontract amount of $_____to small business concerns, and (ii)_____percent of the total planned subcontract amount of $_____to small business concerns owned and controlled by socially and economically disadvantaged individuals.

(2) To the extent that the contractor exceeds such subcontract goals in the performance of this contract, it will receive _____percent (not to exceed ten percent) of the dollar amount of such excesses, unless the contracting officer determines that such excess was not due to efforts by the contractor, i.e., subcontractor costs in excess of those contractually agreed upon or where the actual subcontract amount exceeds that estimated in the subcontract plan; or planned subcontracts which were not disclosed in the subcontract plan during contract negotiation.

(3) If the contract is a cost plus fixed fee type, the total of the fixed fee and the incentive payments made pursuant to this clause is subject to the limitations set forth in FPR 1-3.405(c)(2) and DAR 3-405.6(c)(2). (End of Clause)

3. Office of Small and Disadvantaged Business Utilization

Section 221 of the law requires the establishment in "each Federal agency having procurement powers" of an Office of Small and Disadvantaged Business Utilization. The director of each such office must be appointed by the agency head; be responsible only to, and report directly to, the agency head or his deputy; be responsible for the implementation and execution of P. L. 95-507; have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to the functions and duties under the law; assign a small business technical advisor to each office to which a procurement center representative is assigned; cooperate and consult

on a regular basis, with the SBA with respect to carrying out the functions and duties under P. L. 95-507. DAR 1-704.3(b) outlines some twenty-six duties assigned to the small and disadvantaged business utilization specialist (SADBU).

C. CONTRACTS UNDER $10,000

Section 221 of the law provides that:

> Each contract for the procurement of goods and services which has an anticipated value of less than $10,000 and which is subject to small purchase procedures shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market price, and in terms of quality and delivery of the goods and services being purchased. In utilizing small purchase procedures, contracting offices shall, wherever circumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors.

This provision represents a change in emphasis. Contracts for less than $10,000 now will be reserved for small business unless small business firms are not available to perform. Previously, the burden was on the contracting officer to establish that small business firms were available in order to make a small business set-aside.

Additionally, for some time, the procurement agencies and the SBA have had a small business set-aside program which recognized a threshhold of procurements greater than $2,500. Under this program, contracting officers must set aside any procurement of more than $2,500 if sufficient small business concerns are available to supply the required

item. Section 221 "reserves" for small business contracts of less than $10,000 and establishes the "reservation" requirement separate and distinct from the existing set-aside program. [20/20]

D. SUMMARY

This chapter has provided the reader with information concerning various provisions of the law. Again, P. L. 95-507 is an omnibus piece of legislation and this chapter only attempted to explore the most important and germane provisions which impact the acquisition system. It began with the 8(a) program, which in the opinion of the author, is at the crux of the law. Other provisions presented included the subcontracting provisions, contracts under $10,000, and the SADBU organization.

However, the remainder of this study will concentrate on the subcontracting provisions of the law. Most of the research for this study was concentrated in this area, and most of the interviewees felt that the subcontracting provisions offered the best potential for increasing the opportunities to small and small disadvantaged firms.

In Chapter V, an analysis will be made of important issues under the subcontracting provisions.

V. AN ANALYSIS OF THE SUBCONTRACTING PROVISIONS

The subcontracting requirements of P. L. 95-507 potentially represent a significant breakthrough for small and minority firms as subcontractors on Federal contracts. Prior to the enactment of the law, there was no requirement for the submission or negotiation of preaward plans. In general, the old subcontracting program could best be described as a "best efforts" program. Contractors agreed to do the best that they could for small and minority businesses and the Government took an occasional glance to see if anything was being done to fulfill that promise. Some firms worked harder than others, but there was a growing sense by SBA that improvement should and could be made. [21/4]

Probably the most important section of the new law is Section 211. While this section has the potential for providing the mechanism to accomplish the goals of P. L. 95-507, it also has some inherent weaknesses which will be analyzed in this chapter.

A. SUBCONTRACTING PLANS

Section 211 of the law amended Section 8(d) of the Small Business Act and requires generally that the apparent successful contractor of large Federal contracts (over

$1 million for construction and $500,000 for all other contracts) submit to the contracting officer, before award, a subcontracting plan. This subcontracting plan is supposed to set forth "percentage goals as well as dollar amounts" for the utilization of small business concerns as subcontractors. The prime contractor must also describe the efforts it will take to assure that such firms "have an equitable opportunity" to compete for such subcontracts. The law further requires the prime contractor to require that each non-small subcontractor receiving a contract over $1 million for construction or $500,000 for others, develop a subcontracting plan similar to the one required of the prime contractor. Exceptions to these requirements would be contracts/subcontracts performed overseas and contracts for personal services. The contracting officer also has the option to omit the requirement for submission of a plan if he/she determines that there are no subcontracting possibilities for small and small disadvantaged businesses. Most of the Government procurement personnel interviewed by the author concluded that these new requirements would result in additional procurement administrative lead time (PALT). However, none of those interviewed could provide an estimate of the approximate additional PALT. This can probably be attributed to the fact that the law is still too new and the agencies have not had enough recorded

actions to make any meaningful estimates of the amount of added PALT.

Also, many of these interviewees expressed concern as to the cost of implementing and administering the law. None of them had any idea of what it will ultimately cost or what the costs had been to date. Apparently, no one in Government has made the effort to record or accumulate these costs. The reader should be reminded that this was one of the recommendations (A-45) made by the COGP. The concluding chapter of this study will make some recommendations in this area.

There are several inherent weaknesses in this section of the law. First of all, the law requires only the apparent successful offeror or bidder to submit a subcontracting plan. At this point in the procurement process, the successful offeror already knows that he is going to receive the contract and, therefore, has little or no incentive to submit a strong plan. In the case of a negotiated procurement, the contracting officer does have an opportunity to negotiate a better plan with the successful offeror, but the best incentive to produce a strong plan, competition, is already lost.

This situation is worse with the formal advertisement method (FA) in that there is no opportunity for negotiation between the contracting officer and the apparent successful

offeror. The submitted plan must be accepted by the Government so long as it contains the "basic elements" required under the law. Perhaps a better procedure would be to require all offerors to submit a plan with their proposals. This procedure would introduce competition as an incentive to produce a strong plan. Also, the plans could be weighted and considered as a major part of the criteria for selection in the negotiation method. While the lowest price is the major consideration in the FA method, the quality of the submitted plans could be one of the other factors considered if DAR 2-407.5 is changed.

Another possible loophole in the current law as it pertains to submitted plans, is the ability of a bidder to circumvent the "firm bid rule" of the FA method if he is selected as the lowest bidder. Under regular procedures of the FA method, once a bid is submitted, the bidder is firmly committed to his bid. If he is determined to be the lowest bidder and selected for award, then he has a commitment to perform the contract at the price that he bid. Under Section 211 of the law, if he fails to submit a plan to the contracting officer within a specified time, then he is considered ineligible for the award. If an unethical contractor realized after bid submission and selection, that he had bid too low or for whatever reason

wanted to get out of the award, he could merely decide not to submit a plan and thereby be eliminated from the award.

It should be obvious from the above discussion that these aspects of the subcontracting provisions of the law are weak and need to be modified. Recommendations for improvement will follow in the concluding chapter of this study.

In order to carry out the mandates in this section of P. L. 95-507, contractors had the task of revising their supplier lists of small business and small disadvantaged business concerns. Also, contractors' purchasing/material organizations were required to establish the subcontracting goals based upon an analysis of contract work statements, bills of material and make or buy plans. Goal setting actions have to be concurred in by the contractors' various divisions that will implement the plan. All of these tasks must be performed for each contract award. Additionally, regular reports will have to be made on a contract-by-contract basis. Further discussions will be made concerning the reporting issue later in this chapter.

It should be obvious to the reader that the additional requirements outlined above will necessitate the need for increased resources and additional costs to the contractors. One of the major complaints concerning the law, voiced by all of the contractors interviewed, was the issue of additional

costs. However, none of the contractors had made any accurate estimates of the additional costs involved. They all stated that most of these costs would be passed on to the Government either in direct or indirect charges. It should be noted that claims for the above costs will be subjected to the usual allowability evaluations performed under DAR Section XV.

While small and small disadvantaged firms should now have a better chance to obtain Government business, the law does not assure them of that business. These firms must seek out these opportunities. The SBA maintains a Procurement Automated Source System (PASS), which is a computerized system for storing the names as well as other pertinent information on such firms. The system is used by prime contractors to locate small and small disadvantaged firms. These firms should ensure that they are included in this system.

Other source lists include the National Minority Purchasing Council Vendor Information Service, the Office of Minority Business Data Center in the Commerce Department, small business and minority business associations, and bidders' lists at procurement activities.

B. INCENTIVE CLAUSE

Section 211 provides, with respect to negotiated procurements, that Federal agencies are authorized to provide

appropriate incentives to prime contractors to "encourage subcontracting opportunities to small and small disadvantaged firms, commensurate with the efficient performance of the contract." These provisions provide for an additional payment based on a percentage (not to exceed ten percent) of the dollar value of subcontract awards in excess of the goals stated in the subcontracting plans. Also, under this provision, the contracting officer has the right to withhold the award fee if such excesses are not attributable to the prime contractor's efforts. The DAR does not allow a contractor to appeal such a determination, nor an appeal of the precise percentage inserted in the contract.

The DAR requires that an incentive clause be used in all negotiated contracts requiring subcontracting plans, unless the contracting officer makes a written determination to the contrary. The author found, during interviews in Washington, that there had been no incentive clauses executed to date at any DLA activities and only one each at two of the Navy's systems commands. However, there was one incentive clause under consideration at a DLA activity. When questioned as to why no incentive clauses had been used, the most frequent answer was that the law was still too new and that the purchasing activities needed to acquire more experience with the basic clauses before trying to utilize the incentive aspects.

The incentive provision is designed to benefit small and small disadvantaged subcontractors by providing an incentive of more profit for the prime contractors. This provision has the potential to benefit the prime contractor, through increased profits, and small business through increased business opportunities. However, the effectiveness of any incentive depends on establishing realistic percentage goals. Herein lies the basic porblem in utilizing the incentive provision of the law. If the stated percentage goals in the subcontracting plan are understated and are used as the basis for the incentive goals, then the contractor is in a position to make unentitled profits. Therefore, it is very important that the contracting officer ensures that the percentage goals established in the subcontracting plan are realistic and are not understated. This can only be achieved through an agressive preaward review of the submitted subcontracting plan. A discussion on review and evaluation of plans will follow in the next section of this chapter.

Overstating or setting the goals too high in the subcontracting plans is also a problem. While it is the author's opinion that this situation is not likely to occur, it could, given a scenario of an overly ambitious contracting officer and an unsuspecting contractor. Add to this an incentive clause in which failure to meet the basic subcontracting goals would result in a reduction of the initial

contract profit. In this scenario, the contractor could soon find himself in a very untenable position if he did not attain the basic goals.

Other considerations in the use of incentive clauses include the type of contract, item being procured, maturity of the procurement program and the availability of procurement dollars to fund the incentive entitlements.

In a recent report completed by the General Accounting Office (GAO), the following was concluded concerning the incentive provisions of P. L. 95-507. [22/10]

> Incentives to increase small business subcontracting should be used selectively in Federal negotiated procurements. Offeror's proposals should be carefully reviewed to determine the extent of intended subcontracting to small businesses and/or small disadvantaged businesses. The intended subcontracting level from the offeror's proposal and the baseline for incentive awards should be documented in the contract memorandum of negotiations. Incentive awards should not be provided to the contractor unless the contractor exceeds the level of subcontracting to small businesses upon which its proposal is based. Also, any recent prior experience by the contractor on a similar procurement should be considered in determining incentive provisions.

C. EVALUATION OF PLANS

The basic requirement of P. L. 95-507 in the subcontracting area is the submission and incorporation into the contract of a plan for subcontracting to small and small disadvantaged businesses. An acceptable plan must provide the maximum practicable opportunity for small and small disadvantaged firms to participate in contract

performance. The contractor's responsibility is to develop an acceptable subcontracting plan with respect to both groups. The Government contracting officer is responsible not only for ensuring that the requirement for the submission is in the solicitation, but more importantly, he/she is responsible for the evaluation of the plan.

The most perplexing question confronting contracting officers and contractors is "what constitutes an acceptable plan?" The basic requirements for a subcontracting plan are:

(1) A statement of: (a) total dollars planned to be subcontracted; (b) total dollars planned to be subcontracted to small business; and (c) total dollars planned to be subcontracted to small disadvantaged business.

(2) A description of the principal product and service areas to be subcontracted and an identification of those areas where it is planned to use (a) small business subcontractors; and (b) small disadvantaged business subcontractors.

(3) A statement of the method used in developing proposed subcontracting goals.

(4) If indirect and overhead costs are included as an element in establishing the goals in the subcontracting plan, the contractor must explain the method used in determining the proportionate share of indirect and overhead costs incurred with (a) small business, and (b) small disadvantaged business.

(5) The person's name within the contractor's employment who will administer the subcontracting program and a description of his duties.

(6) A description of the contractor's efforts to assure that small business concerns and small disadvantaged business will have an equitable opportunity to compete for subcontracts.

(7) Assurances that the contractor will include the required clauses in appropriate subcontracts and will require all subcontractors (except small business concerns) which receive subcontracts in excess of $500,000, or in the case of a contract for the construction of any public facility, $1,000,000, to adopt and comply with a plan similar to that agreed to by the contractor. Such assurances are to describe the contractor's procedures for the review, approval, and monitoring for compliance with such plans.

(8) Assurances that the contractor will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or SBA to determine the extent of compliance by the contractor with the subcontracting plan.

(9) A recitation of the types of records the contractor will maintain to demonstrate procedures which have been adopted comply with the requirements and goals set forth in the plan.

In deciding whether a proposed subcontracting plan is acceptable, the contracting officer should take, at least, the following actions prescribed by OFPP Policy Letter 80-2:

(1) Obtain the names and locations of principal proposed (a) small business, and (b) small disadvantaged business subcontractors, including the type of product or service and the dollar value thereof to be awarded to each principal subcontractor.

(2) Review information from all appropriate sources, including the prospective contractor, contract administration activities, Small and Disadvantaged Business Utilization Specialist, and SBA representatives, concerning the contractor's historical performance and achievements in placing subcontracts for the same or similar products or services with (a) small business, and (b) small disadvantaged business subcontractors.

(3) Evaluate the anticipated potential for subcontracting to small business and small disadvantaged

business considering the make-or-buy policies or programs of the contractor, the nature of the products or services to be subcontracted, and the known availability of small business and small disadvantaged business concerns in the geographical area where the work will be performed.

(4) Advise the contractor of (a) the availability of the sources of information on potential small business and small disadvantaged business subcontractors, and (b) the names of any known potential small business and small disadvantaged business subcontract sources.

(5) Obtain advice of the Small and Disadvantaged Business Utilization Specialist and the assigned Small Business Administration Procurement Center Representative (if available) concerning the acceptability of the proposed plans.

(6) Negotiate subcontracting goals at a level which represent a good faith, aggressive and comprehensive effort to the contractor to use to the maximum practicable extent small and small disadvantaged subcontractors after appropriate consideration of their price, technical capability, and other pertinent factors. However, the contracting officer is cautioned not to increase any goals if it is apparent that such higher goals must result in significant increased costs to the Government or will seriously impede acquisition objectives.

(7) Promptly negotiate appropriate revisions to the agreed subcontracting percentage and dollar goals if any subsequent amendments to the contract will have a major impact on the original planned volume or type of subcontracting effort.

(8) Give due consideration to the contractor's "make-or-buy" policy or program. This is necessary to ensure that the respective programs are not in conflict. Where the contract work involves products or services which are not generally available in the commercial marketplace or are particularly specialized, and the contractor has a current capacity to perform the work, the contracting officer may recognize the reduced likelihood of subcontracting opportunities.

1. Percentage Goals

In the opinion of the author, the greatest problem facing a contracting officer in the evaluation of a plan is

determining if the stated percentage goals offer the maximum opportunity for small and small disadvantaged businesses. There is no explicit guidance on establishing goals or what constitutes acceptable goals. Most procurement personnel interviewed, as well as SBA personnel, indicated that they expected percentage goals to parallel past small business and minority business percentages. In fact, this is usually the "yardstick" used by purchasing personnel and Small Business Administration - Procurement Center Representatives (SBA-PCRs) in their evaluation of submitted plans.

While this procedure is perhaps the most relevant tool presently available to a contracting officer, it also has several pitfalls. First of all, the previous percentages were based on an aggregate computation of a contractor's overall achievements in support of small and minority businesses. The percentage goals submitted in compliance with P. L. 95-507 are based on an individual contract and, therefore, equivalent comparisons cannot be made.

Secondly, the previous percentages were derived from the old voluntary program. Participation was based on a best effort approach, which probably resulted in some contractors fully supporting the program while others either partially supported it or not at all. This somewhat less than full support of the program was one of the primary factors leading to the enactment of P. L. 95-507. [21/4]

Additionally, a review of several submitted contracting plans revealed a consistent pattern of conservative percentage goals when compared with previous achievements. The following summary of contract percentage goals from one Navy buying activity demonstrates this pattern.

Aerospace Contractor A			Aerospace Contractor B		
N00000-80-C-0002			N00000-79-C-0450		
	SB	SDB		SB	SDB
FY 79	30.3%	1.0%	FY 79	47.4%	2.7%
Plan	16.3%	0.01%	Plan	27.5%	0.00007%
N00000-80-C-0012			N0000-79-C-0085		
FY 79	30%	1.1%	FY 79	47%	2.9%
Plan	11.5%	0.5%	Plan	20%	0.1%

SB-Small Business SDB-Small Disadvantaged Business

While a reasonable explanation for the above reductions could exist, they should at least raise the suspicion of the contracting officer as to their reasonableness. Again, not withstanding, the fact that it is difficult to make direct comparisons between previous aggregate percentages and submitted individual contract percentages, a contracting officer should ask for a full explanation from the contractor. A reason volunteered by one of the interviewed contractors for these conservative goals was that "the civilian contractors did not want to propose goals which they might not achieve

and thereby fall into disfavor with the Government buying agencies." Further, "the law was too new and no one wanted to be the first to be subjected to whatever penalties the Government would impose for failure to meet the planned goals."

It is the opinion of the author that this conservatism will only result in diluting the intent of the law.

2. SBA's Role

SBA has been given a greatly increased role in the administration of P. L. 95-507. DAR 1-707.2 provides for an SBA-PCR review of all applicable solicitations to assure maximum opportunity for such firms to participate as subcontractors, to submit his advice to the contracting activity, to evaluate actual prime contractor performance and to assist both the military departments and its contractors in all aspects of defense subcontract planning for small and small disadvantaged businesses. It should be noted that the SBA-PCR's role in the review of solicitations is only an advisory one and the contracting officer is not bound by this advice. Discussions with procurement personnel at several agencies indicated that at some activities some of the SBA-PCR's were attempting to extend their role beyond an advisory one. There apparently had been cases where the SBA-PCR disagreed with the decision of the contracting

officer to include a subcontracting clause in a solicitation, or the adequacy of goals; and became quite adamant about seeking a reversal of those decisions. If this is occurring at procurement activities, it is clearly in violation of the role of the SBA-PCR. DAR 1-707-2(e) states that:

> The SBA is not authorized to prescribe the extent to which any contractor or subcontractor shall subcontract; specify concerns to which subcontracts shall be granted; or exercise any authority respecting the administration of individual prime contracts.

Additionally, OFPP Policy Letter 80-1 directs that the SBA-PCR should be given an opportunity to review the total procurement package prior to execution. The SBA-PCR will also be provided a copy of the plan finally negotiated.

Notwithstanding the above, contracting officers should be aware of the reporting requirements of SBA as outlined in Section 211 of the law. It states that:

> At the conclusion of each fiscal year, the Administration shall submit to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives a report on subcontracting plans found acceptable by any Federal agency which the Administration determines do not contain maximum practicable opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts described in this subsection.

Again, all of the above procedures will add time to the PALT.

3. Standardized Plans

A potential problem faced by contractors is the inconsistency of evaluation standards between Government agencies. One interviewed contractor claimed that he submitted the same subcontracting plan to two different agencies and it was completely accepted by one and rejected by the other. Another contractor complained about the fact that evaluation standards by primes toward their subcontractors' (for subcontracts over $500,000) plans were inconsistent. In an effort to alleviate these inconsistencies, the General Electric Company developed a standardized plan. A copy of this plan is contained in Appendix B.

In an effort to assist contracting officers in their evaluation of plans as well as contractors in their preparation of plans, the Air Force has developed evaluation guidelines. A copy of these guidelines is contained in Appendix C. These guidelines also contain a summary documentation checklist to be used by contracting officers. It is not unlikely that, as more experience is gained from the preparation/evaluation of plans, a standard subcontracting plan format will be derived. However, a standardized plan should be very general in nature so as to not create a "rubber stamp type plan" which would limit the ability of a contracting officer to negotiate a better plan with the contractor. Whether a standardized plan is used or not

should make little difference in terms of the responsibility of contracting officers to ensure that submitted plans offer maximum opportunity to small and small disadvantaged businesses.

D. REQUIRED REPORTS

Reporting requirements were perhaps the most frequent complaint voiced by the contractors interviewed. Under Section 211 of the law, Congress authorized evaluation compliance with subcontracting plans, either on a contract-by-contract basis or in the case of contractors having multiple contracts, on an aggregate basis. DOD requires that contractors submit a quarterly report of commitments to small, large and minority businesses. These reports are to be made on a contract-by-contract basis. Currently, DOD contractors are required to submit these reports utilizing DD Form 1140-1. However, OFPP is still in the process of developing a uniform reporting form that will be used by all government agencies in the future.

Civilian contractors interviewed argue that this method of reporting is unduly burdensome and not cost effective since P. L. 95-507 permits aggregate reporting on the basis of multiple contracts. They point to the situation of large contractors who have hundreds of contracts and responsibility for supervising the plans of several hundred subcontracts.

They further pointed out that excessive paperwork will reduce resources that could be available to assist small businesses.

While some Government personnel sympathized with these complaints from contractors, others suggested that these concerns are misplaced because all or most of these additional costs are passed on to the Government. It should be noted that apparently no additional funds have been appropriated by Congress to pay these increased costs which result form P. L. 95-507. Also, it became obvious from discussions with Government administrators, that additional procurement funds have not been identified to cover these costs.

E. COMPLIANCE MONITORING

Responsibility for compliance with subcontracting plans has evolved into a dual effort by the SBA and DOD. Section 211 of the law specifically authorized SBA to evaluate compliance with subcontracting plans. Again, it should be noted that this authorization, authorized evaluation either on a contract-by-contract basis, or in the case of contractors having multiple contracts, on an aggregate basis. Apparently, SBA has decided along with DOD to evaluate compliance on a contract-by-contract basis.

DOD also conducts compliance reviews and it is the basic responsibility of procurement agencies to enforce its

contracts. Specifically, the responsibility for enforcement of all terms of a contract rests with the procurement agency and its contracting officer. The contracting officer further has to make a determination of contractor responsibility on future purchases. In order to minimize duplication of effort, SBA and DOD personnel attempt to make joint evaluation reviews whenever possible. The primary responsibility for compliance review in DOD has fallen on the shoulders of DLA. Of course, this was the logical organization to accomplish this task, since DLA has a national network of small business specialists in place who have performed similar tasks in the past.

DAR 1-707.2(C) tasks the ACO with the responsibility for monitoring, documenting, evaluating and advising the PCO, as appropriate, as to the contractor's performance under the required subcontracting clause as follows:

> (1) the extent which the contractor's goals for small business and small disadvantaged business participation are being met;
>
> (2) whether the contractor's efforts to assure such participation are in accordance with the efforts described in the subcontracting plan; and
>
> (3) whether the contractor is requiring its subcontractors to submit and carry out similar subcontracting plans.

Section 221 of the law requires that at the conclusion of each fiscal year, the head of each Federal agency shall report to the SBA on the extent of participation by small

and small disadvantaged businesses in procurement contracts of such agency. The SBA is further required to submit these reports to the Small Business Committees in both houses of Congress, together with appropriate comments.

Interviews with both DLA small business personnel and SBA field personnel surfaced a potential problem of undermanning by both of these organizations. This situation is perhaps more acute within the SBA organization than with DLA. The subcontracting specialist (SCS) has the responsibility for compliance review within SBA. Additionally, the SCS's are tasked with assisting SBA-PCR's in making preaward evaluation of subcontracting plans, providing assistance to prime contractors in locating capable small and small disadvantaged businesses, and counseling and assisting small and small disadvantaged businesses. Prior to P. L. 95-507, the SCS monitored the program and goals under the voluntary program. Under P. L. 95-507, they now are tasked with review of compliance on a contract-by-contract basis, and the preparation of appropriate reports. According to an SBA official, there are only 40 SCS slots and they will be responsible for reviewing an estimated 8,000 subcontracting plans each year.

Because of the relatively small number of SCS's and the increased workload resulting from a contract-by-contract review, the time required to respond to SBA-PCR's on preaward

evaluation of plans has been extended. Estimates from SBA officials of the current average time is approximately ten days. Again, this will result in additional PALT.

The penalties for failure to comply in "good faith" with the subcontracting requirements were outlined in OFPP Policy Letter 80-2. It states that:

> The failure of any contractor to comply in "good faith" with any of the required subcontracting plans will be a material breach of such contract or subcontract. If such a breach has occurred in the prime contract, the contracting officer shall review the available facts to determine what remedy is in the best interests of the Government. Such remedies may include Termination for Default Clause, negotiated reduction in contract price, negotiation of a revised subcontracting plan to correct deficiencies, or other negotiated measures the contracting officer may deem appropriate. In determining the proper remedy, the contracting officer shall consider as a minimum, (1) the reasons attributed to the failure to comply in good faith, (2) the Government's need for the contract deliverables, and (3) the impact a proposed remedy may have on existing small and disadvantaged subcontractors.

During interviews with Government personnel at various buying activities, the question was asked as to whether or not any contractors had in fact been found to be in breach of contract. The answer was a consistent negative reply. It remains to be seen if the contractual remedies stated above will be invoked and what kind of effect it will have on policing compliance with the law.

F. IMPLEMENTATION

Since the enactment of P. L. 95-507, the Federal government has been slow in implementing the law. P. L. 95-507

was signed into law on October 24, 1978. It was not until eight months later that OFPP published rules and regulations implementing Section 211. On July 27, 1979, DOD published DAC 76-19 which implemented Section 211 within DOD. Congressional hearings were held by the Subcommittee on General Oversight and Minority Enterprise of the House on December 4,1979. During these hearings, Federal Government officials from the various agencies were severely "raked over the coals" by members of the subcommittee. They were accused of delaying compliance with the law. Rep. John J. LaFalce (D-NY), the panel's chairman, said that:

> Despite our efforts to provide small and minority business with the maximum practicable opportunity to participate in the performance of contracts let by the Federal Government, it has come to the subcommittee's attention that the Federal agencies and departments have been derelict in their implementation of the subcontracting program. The result is that the law's goal, to increase the small and disadvantaged business share of the Federal procurement dollar, has been frustrated. To the extent that we are aware, 14 Government agencies have issued almost 1,000 solicitations without required subcontracting notices, and over 1,200 contracts valued at approximately $4.6 billion have been awarded without requite subcontracting plans. [1/3]

Rep. Parren J. Mitchell (D-MD) stated that:

> Some evidence strongly infers a flagrant lack of compliance with Public Law 95-507. I must remind these agencies' representatives that they are neither judge nor jury. This law is law of the land and is to be implemented as written, not as some agency employees think it should be. I am personally committed to this law and I will be in the vanguard calling for the removal of those recalcitrant agency employees who fail to implement Public Law 95-507. [21/29]

Among the agencies which came under the heaviest fire from the subcommittee were the SBA, DOD, OFPP and the

Department of Health, Education and Welfare. Subcommittee members were particularly critical of OFPP and SBA for their failure to assure that the procuring agencies effectively and timely implement the law.

In an opinion issued just prior to this hearing, the GAO ruled that contracts awarded after issuance of the regulations should contain subcontractor plans, otherwise they were legally deficient. GAO further ruled that the remedy must depend on the particular circumstances. Contract modification, contract termination and resolicitation, or no action at all are all remedies that might be used.

During this same period of time, a coalition of black business groups threatened to file suit against the Government, charging it with violating subcontracting laws. [23/E-1]

As a result of these events, DOD, along with the other agencies, initiated "crash" programs to remedy where feasible those contracts/solicitations which were deficient. This effort within DOD became a major evolution and overshadowed other implementation efforts. It was not until approximately June 1980 that this task was completed by DOD.

Government officials as well as contractor personnel were asked the question, "Why is it taking so long to implement P. L. 95-507?" A number of answers were given, such as follows:

- All of the deficient solicitations/contracts had to be corrected before other implementation could start

- The law is very complex and it takes time to interpret and implement a new law
- Industry thought that it would eventually go away if dragged on long enough
- Government agencies did not want it; they thought it was unnecessary
- OFPP was slow in its publishing of regulations due to restructuring
- Agencies were naturally hesitant toward anything new
- It was not staffed by the agencies prior to enactment
- The language of the law is ambiguous and not clear
- The law was not very well thought out
- Training of procurement personnel was needed

It is the opinion of the author that the slow implementation of P. L. 95-507 was caused by a combination of the above reasons. It would be difficult to attribute the slow implementation to any one or two reasons. One thing that should be clear to DOD and the various other Federal agencies, is that Congress has an intense interest in this law and is obliged to hold hearings as frequently as necessary to ensure that the spirit of the law is enforced.

OFPP Policy Letter 80-2 dated May 9, 1980, supplemented earlier guidance and should help in clarifying several implementation issues. Among the significant features included in this guidance are:

1. Expanded Small and Small Disadvantaged Business Subcontracting solicitation provisions.

2. A definition of the term "subcontract" which was a recommendation included in a recent GAO study. The term "subcontract" is defined as any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

3. Instructions to the contracting officer concerning contracts with options and letter contracts.

4. Handling of plans for commercial products. The contractor is only required to submit one company-wide plan annually, which relates to the company's production generally (both for commercial and non-commercial products).

5. Guidance to the contracting officer in determining the acceptability of a proposed plan.

G. SUMMARY

This chapter, while being rather voluminous, has attempted to analyze some of the key areas of the subcontracting provisions of the P. L. 95-507. As stated earlier, the author considers the subcontracting provisions of the law to be the key provisions and probably the provisions which will have the greatest impact on the acquisition process.

Even after implementation is achieved, the law will not be truly effective until and unless the groups that it is intended to help make the effort to obtain that help. The basic intent of the law is to provide "opportunity" for small and small disadvantaged businesses. While Government agencies and prime contractors will make some effort to seek them out, the best and surest way for these

businesses to receive the full benefits of the law is to seek out the opportunities. They should make sure that they are included on SBA's Procurement Automated Source System (PASS), and other source lists which are normally available to prime contractors. They should also make personal contact with contractors and Government agencies in their geographical areas. Again, P. L. 95-507 has only created the opportunity, but it does guarantee a share of the "Federal pie."

VI. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

1. P. L. 95-507 has the potential of not only increasing the opportunities of small and small disadvantaged businesses to share in the billions of Federal procurement dollars spent each year, but also to become viable independent enterprises. P. L. 95-507 is not just another statute in the long line of statutes to use the Government contract to implement socio-economic policies. P. L. 95-507 is a very ambitious and complex law that will have the full and apparently continuing support of Congress. The law now makes it mandatory for prime contractors to subcontract with small and small disadvantaged businesses. It also mandates that contracting agencies will reserve all contracts under $10,000 exclusively for small business unless the contracting officer is unable to obtain offers from two or more small businesses that are competitive with market prices, quality and delivery.

The law also for the first time, gave legitimacy to the 8(a) program. In doing so, it created a mechanism to increase the level of competence of 8(a) firms. Through the SBA office for Minority Small Business and Capital Ownership Development, 8(a) businesses will be assisted in developing comprehensive business plans. This office will

also provide such nonfinancial services as loan packaging, financial counseling, accounting and bookkeeping assistance. It will additionally assist these firms in obtaining equity and debt financing; establish performance monitoring and reporting systems to assure that participants comply with their business plans; analyze the cause of the success or failure of participating firms; and, provide assistance in the procurement of surety bonds. Further, the law has provided new standards for admission to the 8(a) program.

The use of small and small business as subcontractors creates the opportunity for additional assistance to be provided by prime contractors. Many of the large contractors already had special programs which were directed toward providing assistance and increasing their purchases from small and disadvantaged firms. These voluntary programs coupled with the thrust of P. L. 95-507 should assist these firms in becoming viable enterprises.

2. The implementation of P. L. 95-507 has been slow due to a combination of reasons. First among these reasons was the fact that there was little or no coordination between the drafters and the procurement agencies prior to enactment.

The law represents a significant change in emphasis from essentially a passive role where contractors were encouraged to subcontract with small and minority business firms to a policy where the contracting officer participates

with the contractor in determining an appropriate subcontracting plan, is authorized to incentivize the plan, and can terminate the contract to enforce compliance. OFPP has played a major role in the implementation, while at the time, it was going though a period of restructuring and role change. Also, during this same time, DOD took a "let's wait and see" position as to OFPP's new role. DOD and the other Federal agencies "evoked the wrath" of Congress by failing to insert the required clauses in solicitation/contracts in a timely manner. Congress then demanded that the agencies correct these deficiencies which only resulted in further delay in implementation. There were several other valid reasons surfaced and are listed in Chapter V. All of these reasons, with differing degree of influence, have contributed to the slow implementation of the law.

3. There are certain inherent weaknesses in the subcontracting provisions of the law. As currently written, the requirement for only the apparent successful offeror/bidder to submit a subcontracting plan should be modified. This requirement provides a disincentive for contractors to submit competitive plans. The author believes that this aspect of the law could be significantly improved by requiring all of the offerors/bidders to submit a plan at the time of submission to offers/bids.

This section of the law does not provide for any type of negotiation between the contracting officer and the contractor in the FA method of procurement. This situation can result in the submission of only "token" goals. This aspect of the law should be modified to enable the contracting officer to conduct some type of negotiation with the low bidder concerning the plan. There is also a problem of enforcing the "firm bid" rule under the FA method. As currently structured, a contractor can circumvent this rule by opting not to submit a plan.

4. The implementation/administration of the law has increased PALT. PALT was greatly increased due to the requirement to correct several hundred solicitations/ contracts which were found to be deficient. While this was a one time requirement, PALT will be affected by the new requirement to screen all solicitations for determining if one of the subcontracting clauses will be included. PALT will also be affected by (1) the time required for the SBA-PCR to review the solicitations, (2) the time required for the offeror/bidder to submit his plan, (3) by the time involved in reviewing the plan by the contracting officer, SADBU, SBA-PCR, ACO, SCS, etc., (4) in the negotiation of plans and, (5) time involved in incorporating an incentive clause into the contract, where appropriate. All of these steps will increase PALT and result in longer procurements.

5. The most difficult task for the contracting officer is administering the subcontracting provisions is determining the acceptability of a plan. The law is new and the only data available to assist the contracting officer in his/her determination is the results from the "old voluntary program." This data was collected on an aggregate basis and it will be difficult to make direct comparisons. However, this data is the only "yardstick" available at the present time to assist the contracting officer. If the contracting officer accepts a plan that does not offer the maximum opportunities, then he/she would only be cooperating in limiting the effectiveness of the law. Conversely, if the plan is over-ambitious and unrealistic, then the credibility of the intent of the law would be weakened or lost. Therefore, if the spirit and intent of the law are to be preserved, then it is extremely important that the contracting officer does a good job in determining acceptability of plans.

6. Contract-by-contract reporting requirements will be burdensome to both contractors and Government personnel. DOD is currently requiring contractors to make reports on a contract-by-contract basis. Most large companies who normally have computer resources available will have to restructure their software to be able to accumulate this data and produce the reports. It will certainly require

additional machine time and probably more data processing personnel time. Those smaller prime contractors (not small businesses) who do not have computer assets, will have to contract out for these services or maintain this data manually.

These reporting requirements will be burdensome to the Government because compliance evaluations will be made on a contract-by-contract basis. As has been pointed out in Chapter V, SBA is suffering from a shortage of SCSs to make these evaluations. Additional time and effort will be required by the Government to review and process these reports.

Further, it is uncertain at this time what the forthcoming OFPP reporting form will look like. From the draft copy which was distributed for comments, it would appear that the report form will be very detailed. This is a logical assumption when one considers that this one form will provide data required by several Government agencies and Congress.

7. The costs of implementation/administration of the law by civilian contractors will generally be absorbed by the Government. Without exception, this plan of action was expressed by all of the civilian contractors interviewed. This will be especially true with cost type contracts and will probably be reflected in the basic cost of fixed price type contracts. Several Government officials also acknowledged

that it will occur and they further felt that it was appropriate as long as the cost met the tests of Chapter XV of DAR. Several contractors thought that these costs should be charged as an overhead cost, but had not ascertained what these charges had been to date. This probably is attributed to the fact that the law was still new and they did not have enough data on the costs involved.

It is important that contracting officers be able to isolate and identify these costs so that contractors are not reimbursed for excess amounts.

B. RECOMMENDATIONS

1. Modify the subcontracting provision of the law. The effectiveness of the law can be significantly improved by modifying the requirements for submission of plans. All offerors under the negotiated method of procurement should be required to submit a subcontracting plan. The quality of the plans should also be used as one of the evaluation criteria in the source selection process. It should also be modified to allow contracting officers the opportunity to hold some type of discussion with the low bidders in the FA method of procurement.

Lastly, the provisions should be modified so that the "firm bid" rule is maintained. As currently structured, a bidder can refuse to submit a plan and, therefore, be eliminated from consideration even if his bid is the lowest in price.

2. A continuing effort should be made to improve the quality of subcontracting plans and ensure that goals are realistic. During the initial implementation of P. L. 95-507, submitted plans ranged from a quantity of one page to over twenty pages. There appeared to be a direct relationship between the quantity of pages and the quality of the reports. Of course, this is not to say that a plan has to be bulky to be a good plan. However, the more information provided in the plans, the easier it is for the contracting officer to determine acceptability. It will also probably reduce PALT since the advice from field personnel may not be necessary. The need to ensure that goals are realistic is not only important in the instant contract, but they will also be used in establishing a base line for future plans.

3. A conscientious effort should be made to ensure compliance with plans. Goals are like promises. Sometimes if they are not followed up, they tend not to materialize as originally intended. Additionally, the contracting officer has a duty to enforce all terms of a contract, and the subcontracting plan will be a term within the contract.

Not withstanding the above, if the intent of P. L. 95-507 is to have any real chance of succeding, it will be paramount that goals are met. Of course, most contractors will fulfill their obligations with the plans, but there will also be some who will not.

4. An alternative reporting program should be created. It has been stated several times in this study that the current contract-by-contract reporting is burdensome to both the contractors and the Government. Some type of alternative reporting program should be created. A program should be created whereby large major system contracts will be reported on a contract-by-contract basis and all other contracts will be reported on an aggregate basis. The requirement to submit reports at quarterly intervals should remain until there has been more experience with the law. Later, the interval should be extended to twice-a-year. It is evident that OFPP is making some serious considerations in the design of a new report form, judging by the amount of time that has passed since the draft was distributed for comment. This is prudent and it is hoped that the form is streamlined as much as possible.

5. A benefit/cost analysis should be performed on the law. This would be in keeping with the COGP recommendation A-45 which recommended the consideration of means to make the costs of implementing social and economic goals through the procurement process more visible. This task will not be easy but it is necessary to determine if P. L. 95-507 is cost effective in utilizing the Federal contract to achieve socio-economic goals. There is almost no disagreement among contractors or Government personnel that there is a real need

for socio-economic programs, however, there is much disagreement as to whether the Federal contract is the proper means to accomplish these goals. Until a creditable analysis is performed, the suspicions will continue. However, the implementation/administration of the law must continue.

Public Law 95-507
95th Congress

An Act

To amend the Small Business Act and the Small Business Investment Act of 1958.

Oct. 24, 1978
[H.R. 11318]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business Act and Small Business Investment Act of 1958, amendment.

TITLE I—AMENDMENTS TO THE SMALL BUSINESS INVESTMENT ACT OF 1958

CHAPTER 1

Purchase and guarantee operations.
15 USC 683.

SEC. 101. Section 303(c)(1) of the Small Business Investment Act of 1958 is amended to read as follows:

"(1) shares of nonvoting stock (or other corporate securities having similar characteristics), provided—

"(i) dividends are preferred and cumulative to the extent of 3 per centum of par value per annum;

"(ii) on liquidation of redemption the Administration is entitled to the preferred payment of the par value of such securities; and prior to any distribution (other than to the Administration) the Administration shall be paid any amounts as may be due pursuant to subparagraph (i) of this paragraph;

"(iii) the purchase price shall be at par value and, in any one sale, $50,000 or more; and

"(iv) the amount of such securities purchased and outstanding at any one time shall not exceed—

"(A) from a company licensed on or before October 13, 1971, 200 per centum of the combined private paid-in capital and paid-in surplus of such company, or

"(B) from any such company licensed after October 13, 1971, and having a combined paid-in capital and paid-in surplus of less than $500,000, 100 per centum of such capital and surplus, or

"(C) from any such company licensed after October 13, 1971, and having a combined private paid-in capital and paid-in surplus of $500,000 or more, 200 per centum of such capital and surplus.

"The amount of such securities purchased by the Administration in excess of 100 per centum of such capital and surplus from any company described in clause (A) or (C) may not exceed an amount equal to the amount of its funds invested in or legally committed to be invested in equity securities. For the purposes of the subsection, the term 'equity securities' means stock of any class (including preferred stock) or limited partnership interests, or shares in a syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint ventures for profit, or unsecured debt instruments which are subordinated by their terms to all other borrowings of the issuer.".

"Equity securities."

15 USC 687.

SEC. 102. The last sentence of section 308(b) of the Small Business Investment Act of 1958 is amended to read as follows: "Such com-

panies are authorized to invest funds not reasonably needed for their operations in direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or in certificates of deposit maturing within one year or less, issued by any institution the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or in savings accounts of such institutions.".

Repeal.
15 USC 687i.

SEC. 103. The last sentence of section 317 of the Small Business Investment Act of 1958 is repealed.

15 USC 681.

SEC. 104. Section 301(d) of the Small Business Investment Act of 1958 is amended by inserting "or formed as a limited partnership," immediately after "statutes,".

Capital requirements for small business investment companies.
15 USC 682.

SEC. 105. Section 302(a) of the Small Business Investment Act of 1958 is amended to read as follows:

"SEC. 302(a). The combined private paid-in capital and paid-in surplus of any company licensed pursuant to sections 301(c) and (d) of this Act shall not be less than $150,000: *Provided*, *however*, That the combined private paid-in capital and paid-in surplus of any company licensed on or after October 1, 1979 pursuant to sections 301(c) and (d) of this Act shall be not less than $500,000. In all cases, such capital and surplus shall be adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with its articles.".

CHAPTER 2

15 USC 694a.

SEC. 110. Section 410(4) of the Small Business Investment Act of 1958 is amended by—

(1) deleting the word "or" after the phrase "conditions of the contract,"; and

(2) deleting the period after the phrase "fails to make prompt payment" and inserting in lieu thereof ", or (D) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.".

Surety bond guarantees.
15 USC 694b.

SEC. 111. Section 411 of the Small Business Investment Act of 1958 is amended to read as follows:

"SEC. 411 (a) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety (the terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administration's experience with the particular surety) against loss, as hereinafter provided, as the result of a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary and coterminous therewith, by a principal on any contract up to $1,000,000, subject to the following conditions:

"(1) the person who would be the principal of the bond is a small business concern;

"(2) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;

"(3) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section;

"(4) the Administration determines that there is a reasonable expectation that such person will perform the covenants and conditions of the contract with respect to which the bond is required;

"(5) the contract meets requirements established by the Administration for feasibility of successful completion and reasonableness of cost; and

"(6) the terms and conditions of any bond guaranteed under the authority of this part are reasonable in light of the risks involved and the extent of the surety's participation.

"(b) Subject to the provisions of this section, in connection with the issuance by the Administration of a guarantee to a surety as provided by subsection (a), the Administration may agree to indemnify such surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the Administration pursuant to subsection (a): *Provided, however*—

"(1) prior to making any payment under this subsection, the Administration shall first determine that a breach of the terms of such bond was imminent;

"(2) no payment by the Administration pursuant to this subsection shall exceed 10 per centum of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the surety's loss sustained in avoiding or attempting to avoid such breach was necessary and reasonable; and Limitation.

"(3) no new agreements to indemnify shall be entered into pursuant to this subsection subsequent to two years after the date of its enactment.

"(c) Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum not to exceed (1) in the case of a breach of contract, 90 per centum of the loss incurred and paid by the surety to or on behalf of the obligee, or to labor and materialmen, in fulfilling the terms of the contract as the result of the breach; or (2) in a case to which subsection (b) applies, the amount determined under subsection (b). Limitation.

"(d) The Administration may establish and periodically review regulations for participating sureties which shall require such sureties to meet Administration standards for underwriting, claim practices, and loss ratios. Regulations.

"(e) Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of all liability if—

"(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation, or

"(2) the total contract amount at the time of execution of the bond or bonds exceeds $1,000,000.

"(f) The Administration may, upon such terms and conditions as it may prescribe, adopt a procedure for reimbursing a surety for its paid losses billed each month, based upon prior monthly payments to such surety, with subsequent adjustments after such disbursement.

"(g) The Administration may at all reasonable times audit in the offices of a participating surety all documents, files, books, records, and other material relevant to the Administration's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section. Audit.

"(h) The Administration shall administer this Part on a prudent and economically justifiable basis and establish such fee or fees for small business concerns and premium or premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the Administration. Administration.

"(i) The provisions of section 402 shall apply in the administration of this section.". 15 USC 693.

Community injection funds. 15 USC 696.

SEC. 112. Section 502 of the Small Business Investment Act of 1958 is amended by adding at the end of paragraph (4) the following new sentence: "Community injection funds may be derived, in whole or in part, from—

"(A) State or local governments;

"(B) banks or other financial institutions;

"(C) foundations or other not-for-profit institutions; or

"(D) a small business concern (or its owners, stockholders, or affiliates) receiving assistance through bodies authorized under this title.".

TITLE II—AMENDMENTS TO THE SMALL BUSINESS ACT

CHAPTER 1

15 USC 631.

SEC. 201. Section 2 of the Small Business Act is amended by adding at the end thereof the following new subsection:

"(e)(1) with respect to the Administration's business development programs the Congress finds—

"(A) that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy;

"(B) that many such persons are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

"(C) that such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, and other minorities;

"(D) that it is in the national interest to expeditiously ameliorate the conditions of socially and economically disadvantaged groups;

"(E) that such conditions can be improved by providing the maximum practicable opportunity for the development of small business concerns owned by members of socially and economically disadvantaged groups;

"(F) that such development can be materially advanced through the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from such concerns; and

"(G) that such procurements also benefit the United States by encouraging the expansion of suppliers for such procurements, thereby encouraging competition among such suppliers and promoting economy in such procurements.

Post, p. 1761.

"(2) It is, therefore, the purpose of section 8(a) to—

"(A) foster business ownership by individuals who are both socially and economically disadvantaged;

"(B) promote the competitive viability of such firms by providing such available contract, financial, technical, and management assistance as may be necessary; and

"(C) clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from small business concerns

owned by socially and economically disadvantaged individuals.".

Procurement contracts.

SEC. 202. (a) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended to read as follows:

"SEC. 8. (a)(1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

"(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator;

"(B) to enter into contracts with such agency, as shall be designated by the President within 60 days after the effective date of this paragraph, to furnish articles, equipment, supplies, services, or materials, or to perform construction work for such agency. In any case in which the Administration certifies to any officer of such agency having procurement powers that the Administration is competent and responsible to perform any specific procurement contract to be let by any such officer, such officer shall let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. If the Administration and such procurement officer fail to agree on such terms and conditions, either the Administration or such officer shall promptly notify, in writing, the head of such agency. The head of such agency shall have five days (exclusive of Saturdays, Sundays, and legal holidays) to establish the terms and conditions upon which such procurement contract may be let to the Administration, and shall communicate in writing to the Administration the terms and conditions so established. Within five days (exclusive of Saturdays, Sundays, and legal holidays) after the receipt of such written communication, the Administration shall decide whether to perform such procurement contract or withdraw its prior certification that the Administration is competent and responsible to perform such contract; and

"(C) to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts.

"No contract may be entered into under subparagraph (B) after September 30, 1980.

Performance bonds.

"(2) Notwithstanding subsections (a) and (c) of the first section of the Act entitled 'An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work,' approved August 24, 1935 (49 Stat. 793), no small business concern shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided*, That the Administrator shall exercise the authority granted by the paragraph only if—

"(A) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to a small business receiving any benefit pursuant to this paragraph;

"(B) the Administration assists, insofar as practicable, a small business receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administration may subsequently require for the successful completion of any program conducted under the authority of this subsection;

"(C) the Administration finds that such small business is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue such bond or bonds subject to the guarantee provisions of Title IV of the Small Business Investment Act of 1958; and

"(D) the small business is determined to be a start-up concern and such concern has not been participating in any program conducted under the authority of this subsection for a period exceeding one year.

"This paragraph shall not apply after September 30, 1980.

"(3) Any small business concern selected by the Administration to perform any Federal Government procurement contract to be let pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

"Socially and economically disadvantaged small business concern."

"(4) For purposes of this section, the term 'socially and economically disadvantaged small business concern' means any small business concern—

"(A) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

"(B) whose management and daily business operations are controlled by one or more of such individuals.

"Socially disadvantaged individuals."

"(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

"Economically disadvantaged individuals."

"(6) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit

and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual.

"(7) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for success in competing in the private sector.

Determinations. "(8) All determinations made pursuant to paragraphs (4), (5), (6) and (7), shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development.

Publication in Federal Register. "(9) Within ninety days after the effective date of this paragraph, the Administration shall publish in the Federal Register rules setting forth those conditions or circumstances pursuant to which a firm previously deemed eligible by the Administration may be denied assistance under the provisions of this subsection: *Provided*, That no such firm shall be denied total participation in any program conducted under the authority of this subsection without first being afforded a hearing on the record in accordance with chapter 5 of title 5, United States Code.

"(10) The Administration shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection.

"(11) To the maximum extent practicable, construction subcontracts awarded by the Administration pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

Annual estimate. "(12) To the maximum extent practicable the Associate Administrator for Minority Small Business and Capital Ownership Development shall submit, no less frequently than annually, a yearly estimate of the dollar amounts and types of contracts required for the efficient use of any program conducted under the authority of this subsection, to each agency which may participate in such program.".

Report to Congress. (b) Not later than June 30, 1980, the General Accounting Office shall submit to the Congress a report which, with respect to provisions of paragraphs (1)(B) and (2) of section 8(a) of the Small Business Act, *Ante*, p. 1761. shall evaluate the implementation of such provisions and whether such *Ante*, p. 1760. implementation furthered the purposes under section 2(c) of the Small Business Act.

15 USC 631. SEC. 203. Section 2(c) of the Small Business Act is amended by inserting "(1)" after "(c)" and by adding at the end thereof the following new paragraph:

Post, p. 1764. "(2)(A) With respect to the programs authorized by section 7(j) of this Act, the Congress finds—

"(i) that ownership and control of productive capital is concentrated in the economy of the United States and certain groups, therefore, own and control little productive capital;

"(ii) that certain groups in the United States own and control little productive capital because they have limited opportunities for small business ownership;

"(iii) that the broadening of small business ownership among groups that presently own and control little productive capital is essential to provide for the well-being of this Nation by promoting their increased participation in the free enterprise system of the United States;

"(iv) that such development of business ownership among groups that presently own and control little productive capital will be greatly facilitated through the creation of a small business ownership development program, which shall provide services, including, but not limited to, financial, management, and technical assistance.

"(v) that the power to let sole source Federal contracts pursuant to section 8(a) of the Small Business Act can be an effective procurement assistance tool for development of business ownership among groups that own and control little productive capital; and

Ante, p. 1761.

"(vi) that the procurement authority under section 8(a) of the Small Business Act shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

"(B) It is, therefore, the purpose of the programs authorized by section 7(j) of this Act to—

Infra.

"(i) foster business ownership by individuals in groups that own and control little productive capital; and

"(ii) promote the competitive viability of such firms by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.".

SEC. 204. Section 7(j) of the Small Business Act is amended to read as follows:

Technical and management assistance.

"(j)(1) The Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(i), 7(j)(10), and 8(a) of this Act, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

"(2) Financial assistance under this subsection may be provided for projects, including, but not limited to—

"(A) planning and research, including feasibility studies and market research;

"(B) the identification and development of new business opportunities;

"(C) the furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections 7(i), (7)(j)(10), and 8(a) of this Act;

"(D) the establishment and strengthening of business service agencies, including trade associations and cooperatives; and

"(E) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

Subcontract placement with businesses located in certain areas.

"(3) The Administration shall encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small

businesses eligible to receive contracts pursuant to section 8(a) of this Act. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections 7(i), 7(j), and 8(a) of this Act. *Ante*, p. 1761.

15 USC 636.

"(A) An advisory committee composed of five high-level officers from five United States businesses and five representatives of minority small businesses shall be created to facilitate the achievement of the purposes of this paragraph. The members of the advisory committee shall be appointed by the President. The chairman of the advisory committee, who shall be designated by the President shall report annually to the President and to the Congress on the activities of the advisory committee. *Ante*, p. 1764. Advisory committee, establishment. Membership.

"(B) The General Accounting Office shall evaluate the activities taken by the Administration to achieve the purpose of this paragraph and evaluate the success of these activities in achieving the purposes of this paragraph. The General Accounting Office shall report to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General, on the findings of this evaluation and shall make recommendations on actions needed to improve the Administration's performance pursuant to this paragraph. Report to Congress.

"(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

"(5) The financial assistance authorized for projects under this subsection includes assistance advanced by grant, agreement, or contract. Grants and contracts.

"(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

"(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

"(8) The General Accounting Office shall provide for an independent and continuing evaluation of programs under sections 7(i), 7(j), and 8(a) of this Act, including full information on, and analysis of, the character and impact of managerial assistance provided, the location, income characteristics, and extent to which private resources and skills have been involved in these programs. Such evaluation together with any recommendations deemed advisable by the Comptroller General shall be reported to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General. Program evaluation. Report to Congress.

"(9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of sections 7(i), 7(j), and 8(a) of this Act.

"(10) There is established within the Administration a small business and capital ownership development program (hereinafter referred to as the 'Program') which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of this Act. The management of the Program shall be vested in the Associate Administrator for Minority Small Small business and capital ownership development program, establishment.

Business and Capital Ownership Development who shall also manage all other services and activities authorized under sections 7(j) and 8(a) of this Act.

Ante, pp. 1764, 1761.

"(A) The Program shall—

"(i) assist small business concerns participating in the Program to develop comprehensive business plans with specific business targets, objectives, and goals;

"(ii) provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the Program, including but not limited to (I) loan packaging, (II) financial counseling, (III) accounting and bookkeeping assistance, (IV) marketing assistance, and (V) management assistance;

"(iii) assist small business concerns participating in the Program to obtain equity and debt financing;

"(iv) establish regular performance monitoring and reporting systems for small business concerns participating in the Program to assure compliance with their business plans;

"(v) analyze and report the causes of success and failure of small business concerns participating in the Program; and

"(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to, (I) the preparation of application forms required to receive a surety bond, (II) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (III) preparation of all forms necessary to receive a surety bond guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958.

15 USC 694a.

"(B) Small business concerns eligible to receive contracts pursuant to section 8(a) of this Act shall participate in the Program.

"(C) No small business concern shall receive a contract pursuant to section 8(a) of this Act unless the Program is able to provide such small business concern with, but not limited to, such management, technical, and financial services as may be necessary to promote the competitive viability of the small business concern within a reasonable period of time.

Responsibilities.

"(11) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under section 7(i) of this Act and small business concerns eligible to receive contracts pursuant to section 8(a) of this Act.".

SEC. 205. Section 7(k) of the Small Business Act is amended by striking the words "7(i) and 7(j)" and inserting in lieu thereof "7(i), 7(j), and 8(a)".

15 USC 633.

SEC. 206. Section 4(b) of the Small Business Act is amended by striking "Associate Administrator for Minority Small Business" where it appears therein and by substituting the following: "Associate Administrator for Minority Small Business and Capital Ownership Development".

SEC. 207. Nothing in this chapter is intended to duplicate or limit any programs or projects administered by the Department of Commerce. 15 USC 647 note.

CHAPTER 2

SEC. 211. Section 8(d) of the Small Business Act is amended to read as follows: Contract opportunities for certain small business concerns. 15 USC 637.

"(d)(1) It is the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

"(2) The clause stated in paragraph (3) shall be included in all contracts let by any Federal agency except any contract which—

"(A) does not exceed $10,000;

"(B) including all subcontracts under such contracts will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

"(C) is for services which are personal in nature.

"(3) The clause required by paragraph (2) shall be as follows:

"'(A) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

"'(B) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the contractor's compliance with this clause.

"'(C) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern— Definitions. 15 USC 632.

"'(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

"'(ii) whose management and daily business operations are controlled by one or more of such individuals.

"'The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

"'(D) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.'

"(4)(A) Each solicitation of an offer for a contract to be let by a Federal agency which is to be awarded pursuant to the negotiated method of procurement and which may exceed $1,000,000, in the case of a contract for the construction of any public facility, or $500,000, in the case of all other contracts, shall contain a clause notifying potential offering companies of the provisions of this subsection relating to contracts awarded pursuant to the negotiated method of procurement.

"(B) Before the award of any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

"(i) is to be awarded, or was let, pursuant to the negotiated method of procurement,

"(ii) is required to include the clause stated in paragraph (3),

"(iii) may exceed $1,000,000 in the case of a contract for the construction of any public facility, or $500,000 in the case of all other contracts, and

"(iv) which offers subcontracting possibilities,

the apparent successful offeror shall negotiate with the procurement authority a subcontracting plan which incorporates the information prescribed in paragraph (6). The subcontracting plan shall be included in and made a material part of the contract.

"(C) If, within the time limit prescribed in regulations of the Federal agency concerned, the apparent successful offeror fails to negotiate the subcontracting plan required by this paragraph, such offeror shall become ineligible to be awarded the contract. Prior compliance of the offeror with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of that offeror for the award of the contract.

"(D) No contract shall be awarded to any offeror unless the procurement authority determines that the plan to be negotiated by the offeror pursuant to this paragraph provides the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of the contract.

Incentives for small business subcontracting.

"(E) Notwithstanding any other provision of law, every Federal agency, in order to encourage subcontracting opportunities for small business concerns and small business concerns owned and controlled by the socially and economically disadvantaged individuals as defined in paragraph (3) of this subsection, is hereby authorized to provide such incentives as such Federal agency may deem appropriate in order to encourage such subcontracting opportunities as may be commensurate with the efficient and economical performance of the contract: *Provided*, That, this subparagraph shall apply only to contracts let pursuant to the negotiated method of procurement.

Subcontracting plans.

"(5)(A) Each solicitation of a bid for any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

"(i) is to be awarded pursuant to the formal advertising method of procurement,

"(ii) is required to contain the clause stated in paragraph (3) of this subsection,

"(iii) may exceed $1,000,000 in the case of a contract for the construction of any public facility, or $500,000, in the case of all other contracts, and

"(iv) offers subcontracting possibilities,

shall contain a clause requiring any bidder who is selected to be awarded a contract to submit to the Federal agency concerned a sub-

contracting plan which incorporates the information prescribed in paragraph (6).

"(B) If, within the time limit prescribed in regulations of the Federal agency concerned, the bidder selected to be awarded the contract fails to submit the subcontracting plan required by this paragraph, such bidder shall become ineligible to be awarded the contract. Prior compliance of the bidder with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of such bidder for the award of the contract. The subcontracting plan of the bidder awarded the contract shall be included in and made a material part of the contract.

"(6) Each subcontracting plan required under paragraph (4) or (5) shall include—

"(A) percentage goals for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

"(B) the name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of the offeror or bidder and a description of the duties of such individual;

"(C) a description of the efforts the offeror or bidder will take to assure that small business concerns and small business concerns owned and controlled by the socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

"(D) assurances that the offeror or bidder will include the clause required by paragraph (2) of this subsection in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1,000,000 in the case of a contract for the construction of any public facility, or in excess of $500,000 in the case of all other contracts, to adopt a plan similar to the plan required under paragraph (4) or (5);

"(E) assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan; and

"(F) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns.

"(7) The provisions of paragraphs (4), (5), and (6) shall not apply to offerors or bidders who are small business concerns.

"(8) The failure of any contractor or subcontractor to comply in good faith with— Breach of contract.

"(A) the clause contained in paragraph (3) of this subsection, or

"(B) any plan required of such contractor pursuant to the authority of this subsection to be included in its contract or subcontract,

shall be a material breach of such contract or subcontract.

"(9) Nothing contained in this subsection shall be construed to supersede the requirements of Defense Manpower Policy Number 4A (32A CFR Chap. 1) or any successor policy.

"(10) In the case of contracts within the provisions of paragraphs (4), (5), and (6), the Administration is authorized to—

"(A) assist Federal agencies and businesses in complying with their responsibilities under the provisions of this subsection, including the formulation of subcontracting plans pursuant to paragraph (4);

Review.

"(B) review any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to determine the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate as subcontractors in the performance of any contract resulting from any solicitation, and to submit its findings, which shall be advisory in nature, to the appropriate Federal agency; and

Subcontracting plans, compliance evaluation.

"(C) evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or in the case contractors having multiple contracts, on an aggregate basis.

Report to congressional committees.

"(11) At the conclusion of each fiscal year, the Administration shall submit to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives a report on subcontracting plans found acceptable by any Federal agency which the Administration determines do not contain maximum practicable opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts described in this subsection.".

CHAPTER 3

15 USC 644.

SEC. 221. Section 15 of the Small Business Act is amended by adding at the end of subsection (f) the following new subsections:

"(g) The head of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, and by small business concerns owned and controlled by socially and economically disadvantaged individuals, in procurement contracts of such agency having values of $10,000 or more. Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and shall realistically reflect the potential of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to perform such contracts and to perform subcontracts under such contracts. Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator of the Office of Federal Procurement Policy for final determination.

Reports to Small Business Administration.

"(h) At the conclusion of each fiscal year, the head of each Federal agency shall report to the Administration on the extent of participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals in procurement contracts of such agency. Such reports shall contain appropriate justifications for failure to meet the goals established under subsection (g) of this section. The Administration shall submit to the Select Committee on Small Business of the Senate and

Submittal of information to congressional committees.

the Committee on Small Business of the House of Representatives information obtained from such reports, together with appropriate comments.

"(i) Nothing in this Act or any other provision of law precludes exclusive small business set-asides for procurements of architectural and engineering services, research, development, test and evaluation, and each Federal agency is authorized to develop such set-asides to further the interests of small business in those areas.

Small purchase procedures.

"(j) Each contract for the procurement of goods and services which has an anticipated value of less than $10,000 and which is subject to small purchase procedures shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased. In utilizing small purchase procedures, contracting officers shall, wherever circumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors.

Office of Small and Disadvantaged Business Utilization, establishment.

"(k) There is hereby established in each Federal agency having procurement powers an office to be known as the 'Office of Small and Disadvantaged Business Utilization'. The management of each such office shall be vested in an officer or employee of such agency who shall—

"(1) be known as the 'Director of Small and Disadvantaged Business Utilization' for such agency,

"(2) be appointed by the head of such agency,

"(3) be responsible only to, and report directly to, the head of such agency or to his deputy,

"(4) be responsible for the implementation and execution of the functions and duties under sections 8 and 15 of this Act which relate to such agency,

15 USC 637, 644.

"(5) have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under sections 8 and 15 of this Act,

"(6) assign a small business technical adviser to each office to which the Administration has assigned a procurement center representative—

"(A) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity, and

"(B) whose principal duty shall be to assist the Administration procurement center representative in his duties and functions relating to sections 8 and 15 of this Act, and

"(7) cooperate, and consult on a regular basis, with the Administration with respect to carrying out the functions and duties described in paragraph (4) of this subsection.

"This subsection shall not apply to the Administration.".

Uniform Federal procurement regulations and procedures.
41 USC 405a.
41 USC 401 note.

SEC. 222. The Administrator of the Office of Federal Procurement Policy is authorized and directed, pursuant to the authority conferred by Public Law 93-400 and subject to the procedures set forth in such Public Law, to promulgate a single, simplified, uniform Federal procurement regulation and to establish procedures for insuring compliance with such provisions by all Federal agencies. In formulating such regulations and procedures the Administrator of the Office of Federal Procurement Policy shall, in consultation with the Small Business Administration, conduct analyses of the impact on small business concerns resulting from revised procurement regulations, and

incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

Information availability.
15 USC 637b.

SEC. 223. (a) For any contract to be let by any Federal agency, such agency shall provide to any small business concern upon its request—

(1) a copy of bid sets and specifications with respect to such contract;

(2) the name and telephone number of an employee of such agency to answer questions with respect to such contract; and

(3) adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract.

(b) Subsection (a) shall not apply to any contract or subcontract under such contract which—

(1) will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(2) is for services which are personal in nature.

Definitions.
15 USC 637c.

SEC. 224. (a) For purposes of this Act—

(1) the term "Administrator" means the Administrator of the Small Business Administration;

(2) the term "Federal agency" has the meaning given the term "agency" by section 551(1) of title 5, United States Code, but does not include the United States Postal Service or the General Accounting Office; and

(3) the term "Government procurement contract" means any contract for the procurement of any goods or services by any Federal agency.

15 USC 632.

(b) Section 3 of the Small Business Act is amended by inserting "(a)" after "Sec. 3." and by adding at the end thereof the following new subsection:

"(b) For purposes of this Act, any reference to an agency or department of the United States, and the term 'Federal agency', shall have the meaning given the term 'agency' by section 551(1) of title 5, United States Code, but does not include the United States Postal Service or the General Accounting Office.".

CHAPTER 4

15 USC 636.

SEC. 231. Section 7(a) of the Small Business Act is amended by inserting after the phrase "The Administration is empowered to make loans to enable small-business concerns" the phrase ", or small-business concerns 100 percent owned and controlled by an Indian tribe as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act,".

25 USC 450b.

15 USC 644.

SEC. 232. Section 15(f) of the Small Business Act is amended by striking out "September 30, 1979" and inserting in lieu thereof "September 30, 1980".

Report to congressional committees.

SEC. 233. Section 15 of the Small Business Act is amended by adding at the end thereof the following new subsection:

"(l)(1) The President shall, not later than October 1, 1979, transmit to the Select Committee on Small Business and the Committee on Armed Services of the Senate and to the Committee on Small Business and the Committee on Armed Services of the House of Representatives a report on the labor surplus area procurement program under this section and the manpower policy described in subparagraph (D).

Such report, together with recommendations, shall include, but not be limited to—

"(A) an analysis of the effectiveness of such labor surplus area procurement program, including its effectiveness in creating jobs in the areas of high unemployment and the method by which labor markets are classified and designated as labor surplus areas;

"(B) its potential benefits to Federal, State and local governments, including tax benefits, reductions in Federal payments to labor surplus areas, and reductions in State unemployment costs where such information is available;

"(C) its potential costs, including its impact on the efficient utilization of Federal resources, its effect on the local economy of non-labor surplus areas, its impact on small business concerns not in labor surplus areas to the extent such information is available, and its impact on contract costs to the Federal Government; and

"(D) with respect to the implementation by the Department of Defense of Defense Manpower Policy Number 4A (32A CFR Chapter 1) or any successor policy, in addition to the matters required by subparagraphs (A), (B), and (C), information concerning the impact on such matters of the expenditure of any funds which were available for procurement and which were not obligated for expenditure on September 30, 1977.

Approved October 24, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-949 (Comm. on Small Business) and No. 95-1714 (Comm. of Conference).

SENATE REPORTS: No. 95-1070 (Select Comm. on Small Business) and No. 95-1140 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Mar. 20, considered and passed House.

Sept. 15, considered and passed Senate, amended.

Oct. 6, House agreed to conference report.

Oct. 10, Senate agreed to conference report.

APPENDIX B

STANDARDIZED PLAN FOR "SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS" (SBSDBC) PLAN

FORMAT

DEVELOPED BY THE

GENERAL ELECTRIC COMPANY

MINORITY AND SMALL BUSINESS PROJECT OFFICE

FAIRFIELD, CONNECTICUT 06431

Note: The term Minority Business is used interchangeably with socially and economically disadvantaged business throughout this document. This format is appropriate for both Small Business and Small Disadvantaged Business Concerns.

June 29, 1979

FORMAT

The overall appearance and content of the Small Business and Small Disadvantaged Business Concerns Plan should do more than reflect an effort to use small business and minority business vendors - it should have a positive influence on the effectiveness of the Company's communication of its sincerity in meeting Company Small Business and Small Disadvantaged Business Concerns (SBSDBC) Goals.

The Business Plan Format is as follows:

I. Statement of Corporate Policy Statements on SBSDBC utilization

II. Dissemination of Policy Statements

III. Responsibility for Implementation

IV. Business Key Environmental Factors

V. Establishment of Goals and Timetables, where applicable

VI. Action-oriented Programs

VII. Internal Audit and Reporting Systems

VIII. Support of the Small Business and Small Disadvantaged Business Concerns Advocate Program.

The selection should appear in the sequence listed.

Guidelines for the content of the required eight sections are found in Sections I through VIII of these instructions. The Format is also to be used as a guide when developing the first three sections - Title Page, Contents and Introduction.

All prime contracts valued in excess of $500,000 ($1,000,000 for construction) received by GE from the Federal Government require the submission of a subcontracting plan. Separate plans are required for both Small Business and Small Disadvantaged Business Concerns.

TITLE PAGE

Each Small Business Plan and Small Disadvantaged Business Plan will have a title page as indicated in the Format. The title page should show the document title; facility name, address and telephone number; individuals responsible for preparing, review and approving the particular Business Plan, their titles and telephone numbers; commencement and expiration data of the Plan; and name, title, address and telephone number of the Small Business or Small Disadvantaged Business Project Manager as appropriate.

CONTENTS

The contents depends upon the emphasis on the Small Business or the Small Disadvantaged Business Plan. All pages should be numbered and contents divided to denote major parts and sections.

*INTRODUCTION

The introduction should prepare the reader for the information that follows it. It should consist of no more

than two pages plus a facility organization chart. Although the introduction should not tell what is in the plan (Section I through IX), it should identify the facility, indicate the city, county and state, provide a brief view of the economic picture of the business, list the principal business activity, and detail the management organization (Small Business and Small Disadvantaged Business Coordinator, Small Business and Small Disadvantaged Business Liaison Officer and Support Staff). It should also identify unique aspects of the particular kind of contract that the plan covers and should specify how these aspects will impact on or influence the SBSDC Plan. (*see note below)

USING THE SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS PLAN (SBSDBC) FORMAT

The Small Business and Small Disadvantaged Business Coordinator, Liaison Officer and/or Small Business and Small Disadvantaged Business Council Chairman at each facility must be thoroughly familiar with the format and its use. It is equally important that other managers and staff have sufficient understanding of the format. The entire Small Business and Small Disadvantaged Business plan format should

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* Much of this information is available from the Facility Affirmative action Plan.

be read before commencing development of a specific Small Business and Small Disadvantaged Business Plan. Special attention should be given to Section IV through VIII because they will contain brief descriptions of significant local programs, projects, etc., that have been initiated to solve local problems. The plan should be designed to meet your locations specific needs for Small Business and/or Small Disadvantaged Business as well as meet the specific requirements in the contract.

Upon request regarding SBSDBC Plans, Minority Business Project Office, Fairfield, Connecticut, will provide technical assistance regarding requirements, interpretations and implementation of the Format.

DEFINITION

As used in the plan, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" (minority) shall mean a small business concern which is at least 51 percentum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percentum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of such individuals.

The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. Contractors acting in good faith may

rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

TITLE PAGE

STANDARDIZED "SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS" PLAN

GENERAL ELECTRIC COMPANY

Facility Name

Address

Telephone Number

Prepared by_____

Title of Small Business and Small Disadvantaged Business Coordinator

Telephone Number_____

Approved by_____

Title of Chief-on-Site Manager

Telephone Number_____

Effective Date_____

Period From_____to_____

TABLE OF CONTENTS

INTRODUCTION

I. Statement of Corporate Policy on Small Business and Small Disadvantaged Business

II. Dissemination of Policy Statement

III. Responsibilities for Implementation

IV. Business Key Environmental Factors

V. Establishment of Goals and Timetables, where applicable

VI. Action-Oriented Program

VII. Internal Audit and Reporting Systems

INTRODUCTION

Prepare the introduction of the SBSDBC Plan to contain the name and a brief history of the facility; its location - city, county and state; a product line description; a statement of nature and extent of government contract work conducted at the facility; and a facility organization chart. In the introduction, you should state clearly how your plan meets the requirements of Federal Agencies (DOD, DOT, DOE, etc.) regulations concerning SBSDBC subcontracting programs.

SECTION I - Statement of Corporate Policy on Small Business and Small Disadvantaged Business

Prepare this section of the facility's SBSDBC policy statements. The corporate commitment is set forth as a strong commitment to meeting the principles of Public Law 95-507 and the Federal Procurement Regulations (FPRs) including the Defense Acquisition Regulations (DARs), and directs that business practices and procedures conform to these Federal Laws and Regulations.

The Corporation will include the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and controlled by Socially and Economically Disadvantaged Individuals in all subcontracts which offer further subcontracting opportunities and will require all subcontractors (except small business concerns) who receive subcontracts of $500,000, or in the case of a contract for the construction of any public facility, $1,000,000, to adopt a plan similar to the plan agreed to by our corporation.

SECTION II - Dissemination of Policy

Prepare this section to include what you are doing currently and what you plan to do in order to disseminate the company policy internally and externally as it generally or specifically applies to a contract. Actions and plans should be supported with plans for implementation and exhibits of action taken. Who, what, where and why should be emphasized whenever practicable. In specifying when action will be taken, use terms as monthly, quarterly, annually, etc.

SECTION III - Responsibilities for Implementation

Prepare this section to identify all personnel responsible for implementing the methods and requirements of the SBSDBC Plan. This section should outline all company management and/or supportive roles of key personnel involved in both the planning and implementation of the Small Business and Small Disadvantaged Business Program.

SECTION IV - Key Environmental Factors

Prepare this section to show that you have conducted a search to discover the availability of Small Businesses and Small Disadvantaged Businesses their ability to provide goods or services for the specific contract. Be alert to concentrations or absences of small businesses or small disadvantaged businesses in such specific areas as suppliers

of goods or services. Cite special problem areas, i.e. locating small businesses or small disadvantaged businesses to provide the company's specific needs for goods and services and indicate other key areas of concern.

Also provide examples of approaches to solve negative aspects in the Small Business and Small Disadvantaged Business community. This section can define those procedures you have used to give Small Businesses and Small Disadvantaged Businesses an opportunity to furnish the company materials, supplies or services. Moreover, you should develop a "most probably buy list" defining goods and services most likely to be furnished by SBSDBCs for specific government contracts.

SECTION V - Establishment of Goals

Cite measurable goals and reasonable timetables for achieving these goals. Good faith efforts will require different timetables, depending upon the community, various factors in the organization, and the nature of the contractor's business. Goals should not be rigid, inflexible quotas which must be met, but must be targets reasonably attainable through good faith efforts to make all aspects of the entire Small Business and Small Disadvantaged Business Program work. Goals and timetables should be developed in each specific plan submitted on a contract-by-contract basis. In the instance of setting percentage goals for the

utilization of small business and small disadvantaged business concerns owned and controlled by socially and economically disadvantaged individuals for specific government contracts, goals should be expressed in terms of percentage of total planned subcontracting dollars. In addition, total facility awards to small business and small disadvantaged business contractors should be pro-rated in measuring attainment of small business and small disadvantaged business goals. However, duplication shall be avoided.

SECTION VI - Action-Oriented Programs

After conducting the analysis of the Small Business and Small Disadvantaged Business environments according to Section IV, prepare this section to illustrate how key personnel in the company's purchasing system will attempt to reach the small business and small disadvantaged business goals established for specific contracts.

Direct this system to Buyers, Materials Personnel, Small Business and Small Disadvantaged Business Liaison Representatives, etc.

This section will include a system for identifying minority suppliers and will cover the following:

- Methods for locating SBSDBC firms.
- Development and maintenance of source lists for suppliers.

- Establishment of "Library" of guides and other data identifying SBSDBC vendors.

Also include the following in this section, as applicable:

- Methods for monitoring how well you use SBSDBC vendors, i.e. records kept, etc.

- Special management, technical or financial assistance provided to small business and small disadvantaged business concerns, including the name and address of each Small Business and/or Small Disadvantaged Business firm and the type of assistance provided.

SECTION VII - Internal Audit and Reporting Systems

Establish a system for maintaining records, auditing reports and providing direction and counsel to SBSDBC vendors. Such a system must permit an internal sharing of information and data and a monitoring of problems and progress.

This section sould describe how your use of SBSDBC vendors, as well as any special action programs, will be reviewed and evaluated during the year in order to assure that the company's SBSDBC Policy statement is being complied with. These reports should compare the actual progress achieved with specific and overall SBSDBC Program goals and will recommend changed in program emphasis when goals are not being met.

NOTE: In the instance of reporting on specific government contracts dollar amounts awarded SBSDBC on a total

facility or support basis may be pro-rated over existing government contracts. However, the pro-rated amounts may be used only once in the case of specific contracts - No duplication.

As required by specific government contracts, each appropriate organization unit will report on a frequent basis the following small business and small disadvantaged business purchasing activities to the appropriate government agency in accordance with stated reporting requirements.

GOVERNMENT CONTRACTS

a. Number and value of orders place with each Small Business and Small Disadvantaged Business identified by name for the month and year to date
b. Number and award value or orders solicited from, but not awarded to Small Business and/or Small Disadvantaged Business
c. Description of award (including value) with name and address of Small Business and Small Disadvantaged Business firm for orders over $5000
d. Description of any SBSDBC purchasing training classes conducted
e. List of SBSDBC purchasing seminars and trade fairs attended including name and title of attendee(s)

f. Visits by government officials and representatives of SBSDBC trade associations as well as purpose of visit, names and title of visitors, and name of senior General Electric personnel visited

g. Potentially controversial issues arising from SBSDBC purchasing activities including refusal to permit a small business or small disadvantaged business to bid when requested by the firm, a small business or small disadvantaged business association or a government agency;

h. Award to non-minority firm when a minority small owned firm has invested substantially in the bidding process and is likely to feel unfairly treated; accusations of unfair treatment, whether or not warranted; cancellation of orders with minority small owned firms either for convenience or default; and any other problems likely to reflect unfavorably on the General Electric SBSDBC Purchasing Program.

SECTION VII - Support of Small Business and Small Disadvantaged Business (Minority) Advocate Program

The General Electric Company encourages its employees to participate in and support external organizations that directly or indirectly assist SBSDBC.

Include in this section a narrative description of your participation with SBSDBC advocate groups.

Include the nature of support provided to local SBSDBC vendor programs, i.e., company sponsored membership in minority and women's organizations, financial assistance, loan of personnel or equipment, gifts, contributions, etc. Examples of the company include, but are not limited to, National Alliance of Business, Opportunities Industrialization Centers, National Amigos de SER, NEDA, National Urban League, National Organization for Women, National Association of Black Manufacturers, Interracial Council for Business Opportunity, National Business League, National Minority Publishing Council, National Association of Minority Certified Public Accountants, Latin American Manufacturers Association, Association of Small Research Companies and Small Business Association of New England.

Identify the nature of support, financial assistance, technical assistance, etc., provided to educational institutions having programs enabling minority business persons to compete more equitably in the free enterprise system.

Identify members of management and other employees identified by title service on merit employment councils, community relations councils and similar minority business organizations should be included.

APPENDIX C

Small and Small Disadvantaged Business Subcontracting Plan Evaluation Guidelines

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III. Plan Elements. . . . . .

IV. PCO Actions. . . . . .

V. Summary Documentation Checklist. . . . .

There are no detailed standards which are applicable to every situation. However, the following should be helpful in evaluating small and small disadvantaged business subcontracting plans.

I. GENERAL

The purpose of this paper is to provide guidance to principal contracting officers on what type of assistance should be requested, what to look for, and what to do in meeting his or her responsibilities under PL 95-907 concerning the submission and evaluation of subcontracting plans. The PCO has the key responsibility and must make a determination as to the acceptability of a small and small disadvantaged business subcontract plan. It must, in his/her judgment, provide the maximum practicable opportunity for small and small disadvantaged business concerns to participate in the performance of the contract (7-104.14(b)(d)(1)).

II. ASSISTANCE AVAILABLE TO PCO

A. The ACO should as a general rule be requested to comment on the acceptability of the plan and on the contractor's past performance and compliance with the 7-104.14(a) clause, "Utilization of Small Business and Small Disadvantaged Business Concerns," and past plans. Such past compliance is to be a factor in determining the contractors responsibility (DAR 1-707.2(b)(iii)).

B. The contracting activity Small and Disadvantaged Business Utilization Specialist's assistance should be requested in evaluating the contractor's subcontract plan (1-704.3(b)(viii) and (xix). The Small and Disadvantaged Business Utilization Specialist will have the benefit of seeing all the subcontract plans received at the activity wereas an individual PCO may only see a few. Therefore, the Small and Disadvantaged Business Utilization Specialist should have a special expertise in assisting the PCO.

III. PLAN ELEMENTS

A. Goals

There must be separate percentage goals expressed in terms of percentage of total planned subcontract dollars for small business and awards to small firms controlled by socially and economically disadvantaged persons (7-104.14(b)(a)(1)). The contractor should include all first tier subcontracts to be awarded in performance of the contract, including a proportionate share of products, services, etc., whose costs are normally allocated as indirect or overhead costs when reasonably determined to be attributable to the contract. Practical judgment needs to be exercised regarding allocation of indirect or overhead costs. A contractor's accounting system should be accepted whenever possible. Obviously,

consistency in a particular accounting system is essential in establishing goals. Establishment of goals will require much care in order that negotiated percentage goals are realistic and motivate the contractor to achieve. Percentage goals that are unrealistically low will only create a false sense of success and should be avoided. Likewise, goals that are too high can be counter productive. In the negotiation of goals, the following information should be considered:

1. Total dollar volume of planned subcontracting, total dollar volume of expected awards to small business concerns and total dollar volume of expected awards to small disadvantaged business subcontractors.

2. A description of the principal product and service areas to be subcontracted and an identification of those areas where it is planned to use small business and small disadvantaged business subcontractors.

3. To the extent available, the contracting officer should be furnished the names and locations of principal proposed small business and disadvantaged business subcontractors including the type of product or service and the dollar value thereof to be awarded to each principal subcontractor. This information is to be used only to assist the contracting officer in making a determination as to the acceptability of the proposed percentage and dollar subcontract goals. The contractor is not contractually bound to make subcontract awards to the designated contractors.

4. Method used in developing proposed subcontracting goals for small business and small disadvantaged business concerns. For example, did the contractor use for subcontract solicitation purposes company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, and the facilities of local minority associations?

5. Method used in determining the proportionate share of indirect and overhead costs incurred with small business and small disadvantaged business subcontractors to be allocated to the specific acquisition.

B. Name of Individual

The contractor must name an employee who will administer the subcontracting plan and furnish a description of his

or her duties (7-104.14(b)(a)(2)). It is preferable that the individual be placed in the organization structure where reporting can be done directly to the chief executive or vice presidential level.

C. Description of Efforts

A description must be furnished of the efforts to assure that small and small disadvantaged concerns will have an equitable opportunity to compete (7-104.14(b)(a)(3)). This should include information concerning:

1. Company Wide Policy Statements (7-104.14(b)(b)(1)). It is very important that top management (preferably the chief executive) of the company issue a policy statement to delineate the proper levels of responsibility and that it be directed to all personnel who are able to implement the policy, including technical personnel. A policy statement which places the total responsibility with the individual named to administer subcontract plans is not adequate.

2. Management Interest and Involvement (7-104.14(b)(b)(2)). How does top management monitor progress towards meeting goals? Are there regular "feedback" briefings? Are there corporate wide and divisional goals? The involvement of top management in the achievement of the plan and company programs to assist small and small disadvantaged business should be visible and apparent to all personnel in the organization.

3. Personnel Motivation and Training (7-104.14(b)(b)(3)). A procedure should be established for a specific program for training of personnel involved in the acquisition process. Additionally, a procedure should be established for a program of special recognition or reward for outstanding performance in the implementation of the programs. An innovative performance awards program will eliminate the status quo by acting as an incentive to personnel to support small and small disadvantaged business efforts.

4. Special Assistance (7-104.14(b)(b)(4)). Special assistance should be given small and small disadvantaged firms by arranging solicitations, time for preparation of bids, quantities, specifications, and delivery schedules to facilitate participation by such firms. It is particularly significant when a contractor provides opportunities for small and small disadvantaged business firms to compete for developmental work which will likely result in later production opportunities. Examples of special assistance

to look for, which have been proven to be extremely effective in increasing subcontract awards to small and small disadvantaged firms, include outreach efforts to locate and qualify sources, follow-up efforts to determine why small and small disadvantaged firms did not respond to solicitations or were not successful and the establishment of organizational elements to provide special management, technical and financial assistance.

5. Make-Or-Buy Consideration (7-104.14(b)(b)(5)). Adequate and timely consideration of the potential of small and small disadvantaged firms must be provided in all make-or-buy decisions. The contractor should describe how he does this. Small and small disadvantaged business should be considered as early as possible and at all levels of the make-or-buy decision making process. Lower level breakout by engineering and manufacturing production planners creates in a timely manner increased opportunities for small and small disadvantaged business participation. It is advisable that the company individual named to administer the small and small disadvantaged business subcontract plans be a member of make-or-buy committees.

6. Counsel and Discuss Subcontracting Opportunities (7-104.14(b)(b)(6)). In addition to responding to inquiries as they occur, contractors can actively participate in counselling activities sponsored by business and governmental groups and take part in various organizations dedicated to increasing small and small disadvantaged business firm participation in governmental contracting, e.g., local minority business opportunity councils. The contractor should describe his activities.

D. Clause Flow Down

The prime contractor has an obligation to flow down the subcontracting plan requirement to its subcontractors (7-104.14(b)(a)(4)). The plan should indicate that he will do this. The ACO, in accordance with 1-707.2(c)(3), is required to monitor such performance.

E. Reports

The contractor must assure in his plan that he will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or SBA in order to determine the extent of compliance with the subcontracting plan (7-104.14(b)(a)(5)).

F. Records

The contractor must maintain the type of records necessary to demonstrate the methods by which it is intended that goals will be met and the requirements of the plan carried out (1-707(d)(iii)). The contractor's records must be maintained in a manner that permits extraction of the data which must be made available to support the percentage goals which are proposed in the subcontracting plan. Records must also be maintained to show the extent of achievement related to the goals. In addition, records must be capable of identifying subcontractor business size, solicitations and awards made to small and disadvantaged business concerns and the reason for nonaward to these firms. Also, the contractor should keep records concerning his actions which demonstrate his good faith compliance with the plan. Examples of such records are source lists used, organizations contacted for sources, outreach efforts, training, and awards made. Advice and assistance regarding the development and maintenance of records and reports that reflect compliance or noncompliance with plans can be requested from the contract administration Small and Disadvantaged Business Utilization Specialist (1-704.3(b)(xxiv)).

IV. PCO ACTIONS

A. Review the plan submitted for conformance with III above.

B. Obtain advice and recommendations as necessary concerning the acceptability of the plan and proposed goals from those cited in II above.

C. Evaluate the potential for small and small disadvantaged business subcontracting based on all available information, including the apparent successful offerors historical achievements. Previous involvement of small and small disadvantaged concerns as prime or subcontractors in similar acquisitions should be considered (1-707(d)(1)). The contractor can be requested to provide such data regarding his small and small disadvantaged business subcontracting on similar acquisitions. If a follow-up acquisition is involved, good data can be expected to be available. Any previous data on similar prime contract acquisitions should be considered.

D. Negotiate, in the case of negotiated contracts, subcontract goals which represent good faith, aggressive and comprehensive effort on the part of the apparent successful offeror.

E. Determine whether the plan provides the maximum practicable opportunity for small business and small disadvantaged business concerns to participate in the performance of the contract.

F. In the case of unacceptable plans for negotiated contracts, advise the contractor in writing of the reasons for determining a subcontracting plan to be unacceptable (7-104.14(b)(d)(2)). Do this as soon as possible so the contractor can modify the plan within the time limits prescribed. Tell the contractor how he can make his plan acceptable, e.g., by the use of additional source systems or by establishing higher goals.

G. In the case of advertised contracts, determine whether the apparent successful bidder has submitted a plan as specified in the contract clause in 7-104.14(c). If the plan does not contain the minimum specified requirements as set forth in 7-104.14(c)(a), consult with legal counsel to determine whether the bid should be rejected as nonresponsive.

H. Determine, in the case of advertised contracts where the apparent successful bidder is responsive, whether the plan reflects the best effort by the bidder to award subcontracts to small and small disadvantaged firms to the fullest extent consistent with the efficient performance of the contract. If it does not, follow the procedures in 1-707(b)(2).

I. In the case of negotiated contracts, determine whether an incentive provision as set forth in 7-104.14(d) should be used in accordance with 1-707.3(d). If so, structure an appropriate clause. If not, a written determination setting forth the reasons must be made.

J. The ACO should be requested to submit upon contract completion, a report documenting, evaluating and advising the PCO as to the contractor's performance under the subcontracting plan including (1) the extent to which the goals were met, (2) whether the contractor's efforts were in accordance with the efforts set forth in the plan, and (3) whether the contractor required its subcontractors to submit and carry out similar subcontract plans (1-707.2(c)(1)(2) and (3)). If the contractor did not comply in good faith with the subcontract plan, the PCO shall formally document the noncompliance in writing and include the reasons (the PCO may write a short note attaching the ACO's report). A copy of the official file documentation shall be furnished the ACO (1-707.2(b)(3)).

V. SUMMARY DOCUMENTATION CHECKLIST

Documentation of actions taken by the PCO is important as subcontract plans and their effectiveness will be reviewed after the fact by such agencies of the Government as the Small Business Administration. Accordingly, the attached summary checklist is provided. Answers to the questions should be in brief narrative form. Yes or no answers without any explanation should be avoided wherever possible. The checklist, if answered properly, can serve as the necessary documentation of the rationale for actions taken as well as serving the PCO as a reminder of the actions to be taken.

1. Were ACO comments requested and used?

2. Were activity Small and Disadvantaged Business Utilization Specialist comments requested and used?

3. Did the contractor propose separate percentage goals?

4. Did the contractor base the goals on total volume of planned subcontracting and that planned to be awarded to small and small disadvantaged firms?

5. Did the contractor describe the areas where it is planned to subcontract to small and small disadvantaged business firms?

6. Did the contractor furnish the names and locations by principal small and small disadvantaged firms to be awarded subcontracts?

7. What was the method used to develop goals?

8. How was indirect or overhead costs allocated in developing the goals?

9. What is the name of the individual who will administer the subcontracting plan? Were his or her duties described?

10. Does the contractor have acceptable company wide small and small disadvantaged business policy statements?

11. Did the contractor demonstrate sufficient management interest and involvement?

12. Does the contractor have a program to train and motivate personnel to support subcontracting with small and small disadvantaged firms?

13. Does the contractor provide special assistance to small and small disadvantaged firms?

14. Does the contractor consider the potential of small and small disadvantaged firms in make-or-buy decisions?

15. Does the contractor counsel small and small disadvantaged firms and discuss subcontracting opportunities with them?

16. Does the contractor provide for flow down of the subcontracting plan clause to appropriate subcontracts?

17. Does the contractor assure in the plan that he will submit periodic reports and cooperate in any studies or surveys as may be required to determine compliance with the plan?

18. Will adequate records be maintained?

19. Did the initial plan as submitted provide the maximum practicable opportunity for small and small disadvantaged business participation?

20. If the plan was unacceptable, what were the deficiencies?

21. Was the contractor notified of these in writing?

22. Were you able to establish and negotiate acceptable goals?

23. Should an incentive clause be included? If not, why?

24. After completion, of all negotiations, does the plan, in your judgment, now offer the maximum practicable subcontracting opportunity for small and small disadvantaged firms?

APPENDIX D

RESEARCH QUESTIONS

The following is a sample of the questions used by the researcher in conducting interviews with civilian contractors and Government personnel. These questions were used to lead the discussions with interviewees.

CIVILIAN CONTRACTORS

What is your overall assessment of the law?

What is your strategy for complying with the law?

What is your criteria for selection of a small or small disadvantaged business?

What records are you maintaining in conjunction with the law?

Are you conducting training for your line managers or other personnel?

What is your system for accumulating data on a contract-by-contract basis?

What kind of small and/or minority programs did you have prior to P. L. 95-507?

What is your system for locating small and small disadvantaged businesses?

Do you have a written company policy statement?

What have been your major problems with the law?

Do you have any suggestions for improvement or changes in the law?

GOVERNMENT

What guidance or procedures are being used to evaluate subcontracting plans? Would like a copy if it is in written form.

What training has been done to acquaint your personnel with the law?

What is your strategy/procedure for handling an unacceptable plan from a contractor?

Have you had any cases of refusals to submit an adequate plan?

What effect has the law had on PALT?

What guidance/policy has been established for the use of incentives in Negotiated Procurements? How do you determine percentages? Would like a copy of an incentive clause that has been used.

What reports do you require from the Primes? Who reviews the reports? Are the reports forwarded to higher command?

What resources/tools do you have available to ensure that a Prime has made a "best effort" in utilizing small business and small disadvantaged concerns?

Have there been any steps taken by your command to publicize the program?

Once a contract has been awarded, which incorporates a plan, what role do your PCOs/buyers play in ensuring compliance?

Have you had any cases of noncompliance? What is your strategy for handling cases of noncompliance?

What have been the major reasons for the slow implementation of the law? Any suggestions for improvement?

What do you feel are the strengths/weaknesses of the law? Any suggestions for improvement?

What changes, if any, would you recommend in the law?

What has been the response from the major contractors to the law?

LIST OF REFERENCES

1. U. S. Congress-House, "Implementation of Subcontracting Provisions of Public Law 95-507 (Part 1) Hearings, Washington, D. C.: Government Printing Office, December 4, 1979.

2. U. S. Congress, Title II: Small Business Act of 1953, Public Law 163, LXVII, 83rd Congress, 1st Session, Washington, D. C.: Government Printing Office, July 30, 1953.

3. Report of the Commission on Government Procurement, Washington, D. C.: Government Printing Office, December 1972.

4. Parris, Addison W., The Small Business Administration, New York: Frederick A. Praeger, Inc., 1968.

5. "Small Business Watchdog with a Bigger Bite," Nations Business, May 1975.

6. 25th Annual Report-Small Business Administration, Washington, D. C.: Government Printing Office, February 17, 1975.

7. Capizzi, D. A., The Need to Increase Competition at the Subcontract Level, M. S. Thesis, Naval Postgraduate School, Monterey, California, 1979.

8. Belden, L. and Cammack, E. G., National Security Management Procurement, Industrial College of the Armed Forces, Washington, D. C., 1973.

9. U. S. Comptroller General, Legislative Recommendations of the Commission on Government Procurement: 5 Years Later, Washington, D. C., July 31, 1978.

10. Federal Contracts Report, Bureau of National Affairs, Inc., Washington, D. C. 20037, No. 783, May 28, 1979.

11. Federal Contracts Report, Bureau of National Affairs, Inc., Washington, D. C. 20037, No. 798, September 17, 1979.

12. Federal Contracts Report, Bureau of National Affairs, Inc., Washington, D. C. 20037, No. 800, October 1, 1979.

13. Federal Contracts Report, Bureau of National Affairs, Inc., Washington, D. C. 20037, No. 833, May 26, 1980.

14. Hampton, R. J., MAJ, USAF and Lorette, J., Dr., Socio-Economic Objectives: Impact on Civil and Defense Agencies, Defense Systems Management Review, Autumn, 1979, Vol. 2, No. 4.

15. U. S. Congress-House, Small Business and Capital Ownership Development Act of 1978 Hearings, Washington, D. C.: Government Printing Office, March 16 and 20, 1978.

16. U. S. Congress-House, Report No. 95-1714, Amending the Small Business Act and The Small Business Investment Act of 1958, Washington, D. C.: Government Printing Office, October 4, 1978.

17. U. S. Congress-House, Government Procurement From Small and Small Disadvantaged Business (Public Law 95-507 and Accompanying Reports), Washington, D. C.: Government Printing Office, April, 1980.

18. U. S. Congress-House, Army-SBA 8(a) Pilot Program Hearings, Washington, D. C.: Government Printing Office, February 26 and March 6, 1980.

19. Griffith, P., "House Approves Extension of SBA Army Pilot Program," Monterey Peninsula Herald, October 2, 1980.

20. Birnbaum, O., "Small Business Act Amendments of Interest to Small and Minority-Owned Business: A Guide, District Lawyer, May, 1979.

21. McDermott, R. F., "SBA Actions Leading to P. L. 95-507," Contract Management Magazine, February, 1980.

22. Report by the Comptroller General of the United States, "The Mandatory Small Business Subcontracting Test: Considerations for Public Law 95-507's New Subcontracting Program," PSAD 70-66, Washington, D. C., May 11, 1979.

23. Morris, B., "Blacks Threaten to Sue Over Contracts," Washington Star, December 5, 1979.

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